FINAL

ENVIRONMENTAL IMPACT REPORT

THE INSTITUTE GOLF COURSE

City of Morgan Hill

May 2004

V. COPIES OF THE COMMENTS RECEIVED ON THE RDEIR

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

JAN 30 2004

Regulatory Branch

SUBJECT: File Number: 28442S

Mr. Stephen R. Sorenson
American Institute of Mathmatics (Institute)
P.O. Box 50097
Palo Alto, California 94303

Dear Mr. Sorenson:

This letter is in response to a request for comments on the Revised Draft Environmental Impact Report (RDEIR) for the Institute Golf Course that was received on December 19, 2003 by a notice from City of Morgan Hill Community Development Department dated December 18, 2003. Your course is located at 14830 Foothill Avenue near Corralitos Creek in the City of Morgan Hill, Santa Clara County, California.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

While the proposed work for the renovation of the existing restaurant building and other structures on site, as presented in the RDEIR, does not appears to be within a water of the U.S., any future construction activity or course modifications/maintenance within Corps jurisdiction may require a permit. It is the recommendation of the Corps that the Institute Golf Course obtain a Jurisdictional Determination verified and endorsed by the Corps, based on Appendix C-1 of the RDEIR, to determine what areas of the property might require future permit applications.

In addition, we are aware that there may be endangered or protected plant and animal species on the course. Any work or construction that might impact these area, including those waters not found to be under the jurisdiction of the Corp of Engineers, will need to be coordinated through the appropriate state and federal agencies.

Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the File Number at the top of this letter into Item No. 1. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your work, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

If an individual permit is required, it will be necessary for you to demonstrate to the Corps that your proposed fill is necessary because there are no practicable alternatives, as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines. A copy is enclosed to aid you in preparation of this alternative analysis.

Should you have any questions regarding this matter, please call Jennifer Spann of our Regulatory Branch at 415-977-8717. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter.

Sincerely,

ORIGINAL SIGNED
BY
CHIEF, SOUTH SECTION
FOR
Edward A. Wylie
Chief, South Section

Enclosures

Copy Furnished:
City of Morgan Hill, Community Development Department, Morgan Hill, CA Attn: James Rowe

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO:
1-1-04-TA-0842

FEB 0 4 2004

Mr. James Rowe
City of Morgan Hill
Planning Department
17555 Peak Avenue
Morgan Hill, California 95037

Subject: Institute Golf Course Draft EIR Comments and Recommended Remedies for Potential Take of Endangered Species, Santa Clara County, California

Dear Mr. Rowe:

The U.S. Fish and Wildlife Service (Service) has reviewed the Revised Draft Environmental Impact Report (RDEIR) for the Institute Golf Course, which was released for review in December 2003. The Service obtained the revised DEIR from the City of Morgan Hill's web site on January 29, 2003. The RDEIR addresses activities completed without environmental review, including the 1997 reconstruction of the pre-existing 9-hole golf course to an 18-hole course and the renovation of the existing restaurant onsite. The RDEIR also addresses the continued operation and maintenance of the golf course. The RDEIR indicates which avoidance and minimization measures the applicant has committed to implementing to conserve sensitive species and habitats. In making these comments, we assume that all measures described in the RDEIR under *Mitigation Measures Not Currently Incorporated Into the Proposed Project* will, in fact, be incorporated into the project description.

We believe the reconstruction of the Institute Golf Course in 1997 resulted in take of the threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog) and endangered bay checkerspot butterfly (*Euphydryas editha bayensis*) and damage or destruction of many federally listed plants including Tiburon paintbrush (*Castilleja affinis ssp. neglecta*), coyote ceanothus (*Ceanothus ferrisae*), Santa Clara Valley dudleya (*Dudleya setchellii*), and Metcalf Canyon jewelflower (*Streptanthus albidus ssp. albidus*), in violation of section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). In addition, reconstruction likely resulted in damage or destruction of red-legged frog habitat. We believe 1997 reconstruction also resulted in impacts to the California tiger salamander (*Ambystoma californiense*) (tiger salamander), which is proposed for listing as threatened.

Section 9 of the Act prohibits "take" of listed fish and wildlife without a special exemption. The term "take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Although take of listed plants is not prohibited, section 9(2)(b) of the Act prohibits damage or destruction of listed plants in knowing violation of any law or regulation of any state.

In an August 9, 2002, telephone conversation with the City, we stated that we would exercise our prosecutorial discretion and not pursue a law enforcement action against the golf course if we concluded the impacts to listed species were adequately addressed by the applicant. We also stated that we would attempt to address resolution of this potential violation during the CEQA process.

The Service, in a letter dated April 4, 2003, provided initial comments to the City of Morgan Hill on the first draft of the Environmental Impact Report. On July 15, 2003, the Service sent a letter to the City of Morgan Hill clarifying both the off-site and on-site mitigation measures and agreements that had been reached between the applicant and the Service.

The Service has reviewed the RDEIR and is submitting the following comments:

1) The project proponent's proposed mitigation measures, taken alone, fall short of adequately addressing project related impacts to California red-legged frogs and bay checkerspot butterfly.

2) Red-legged Frog Mitigation Measure Package I adequately addresses impacts to red-legged frogs from the project and provides protection of red-legged frog habitat in perpetuity. The Service supports this package. However, Red-legged Frog Mitigation Measure Package II does not adequately compensate for the loss of California red-legged frog habitat. Though more on-site habitat would be preserved in this package than in Package I, the need still exists to preserve off-site red-legged frog habitat in perpetuity. At no time, has the Service stated that the creation and preservation of on-site habitat alone would sufficiently address adverse impacts to California-red legged frogs.

3) The RDEIR does not analyze project related impacts to the federally endangered bay checkerspot butterfly, *Euphydryas editha bayensis*. Bay checkerspot butterflies are found in association with serpentine soil habitats. Though bay checkerspot butterflies are not likely to be present on the project site now, suitable habitat for this species probably existed on the site prior to grading and impacts to this species habitat should be disclosed in the EIR.

4) In our April 4, 2003, letter the Service recommended that mechanized equipment used to maintain the grounds should only be used during the daylight hours. This measure was previously proposed by the applicant in the Habitat Improvement Plan, dated July 2002. Thought the RDEIR states, on page 43, that individual red-legged frogs (and California tiger salamanders) could be destroyed as a result of the operation of vehicles or by foot traffic, particularly at night (as well as early morning and late evening), the Service has been unable to find a mitigation measure in the RDEIR which would restrict the use of mechanized equipment to daytime hours. We encourage the inclusion of this protective measure in the final EIR.

5) In our April 4, 2003, letter the Service also recommended that annual surveys for red-legged frogs and tiger salamanders be conducted for five consecutive years to determine whether protection and restoration measures have been effective. This monitoring has not been proposed as mitigation in the RDEIR.

6) The discussion of special status plant (serpentine soil) habitat loss should be moved from the secondary impacts section (page 107) to the direct impacts section. Serpentine habitat was lost as a direct result of grading activities; this is not an indirect (secondary) effect.

In summary, we recommend that the City of Morgan Hill incorporate into the EIR the comments the Service provided in our letters dated April 4, 2003 and July 15, 2003, and the new comments provided above. In addition, we strongly encourage the City of Morgan Hill to choose the California Red-legged Frog Mitigation Measure Package I. Mitigation Measure Package II does not provide adequate compensation for the loss of red-legged frog habitat, nor does it provide for the protection of habitat in perpetuity. The Service also encourages the City of Morgan Hill to adopt all other mitigation measures that were proposed in the DEIR that are not presently incorporated into the proposed project.

If you have any questions about the comments on the Revised Draft Environmental Assessment for the Institute Golf Course, please contact Mary Hammer or Dan Buford at (916) 414-6625.

Sincerely,

for Catrina Martin
Deputy Assistant Field Supervisor

DEPARTMENT OF TRANSPORTATION
P. O. BOX 23660
OAKLAND, CA 94623-0660
(510) 286-4444
(510) 286-4454 TDD

January 22, 2004

SCL-101-R15.07
SCL101660
SCH 2000062092

Mr. Jim Rowe
Planning Department
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mr. Rowe:

The Institute Golf Course – Draft Environmental Impact Report (DEIR) Revised

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the revised DEIR and have the following comments.

1. Section D. Hydrology and Water Quality and Appendix D. Hydrology, Water Quality and Water Supply, Pages 60-62: indicate that there are several shortcomings on the Hydrology / Hydraulics Analysis of the project under pre-project and post-project conditions. The report also indicates that the peak runoff, to the Foothill Avenue drainage and southerly to San Martin Creek, will increase after project development due to re-configuration of the on-site drainage patterns. The increased runoff from the project will exacerbate previous flooding conditions in this downstream area causing more frequent flooding problems. This may also affect the flow on Llagas Creek, which flows parallel to and just east of Route 101 downstream of San Martin Creek. U.S. 101 and S.R. 25 right of way are downstream of the development site. The proposed project development has the possibility of increasing flooding of the adjacent State facilities. A revised Hydrology and Hydraulics Analysis should be submitted by the developer to the Santa Clara Valley Water District (SCVWD) and the City of Morgan Hill for their review and approval. The Department suggests that the analysis include the effects on the

flows to Llagas Creek, which may affect the flooding of State facilities. The Department also requests that a copy of the SCVWD and the City of Morgan Hill's review, comments and approval of the analysis and the proposed project be submitted for our review.

2. Pages 72-79, Mitigation and Avoidance Measures, Mitigation Measures not presently incorporated into the proposed project: The Department requests that mitigation efforts be made to redesign the golf course drainage system to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions; to mitigate soil erosion resulting from construction activity and on-going maintenance of the golf course that may involve excavation, drainage and grading work; and to mitigate non-point source runoff pollutants to protect the water quality in the creeks.

3. Pages 118-119, Cumulative Impacts, Cumulative Increase in Surface Water Runoff Impacts and Water Quality Impacts: The proposed project will result in a significant cumulative impact on surface water runoff and quality. As a downstream property owner this is unacceptable to the Department. The mitigation measures identified in this revised DEIR for surface water runoff and water quality should be incorporated into the proposed project.

4. Pages 124-125, Reduced Impact On-Site Alternative, Hydrology and Water Quality Impacts: As a downstream property owner, the Department suggests that all of the mitigation elements should be included to reduce Hydrology and Water Quality Impacts.

5. Page 128, Significant Unmitigated Impacts, Hydrology and Water Quality: As a downstream property owner, the proposed project's "significant unmitigated impacts" as described on pages 63-71 are unacceptable to the Department.

6. Appendix D, Hydrology, Water Quality and Water Supply: The report should be revised in accordance with final revised calculations and analyses related to surface water hydrology, ground water, water quality and water supply. Relevant calculations or analyses should be included in the report as attachments. The report should be submitted to the City of Morgan Hill and SCVWD for their approval. Please submit a copy of their approval letter.

The revised draft EIR of the already completed part of the golf course development indicates that the facilities within the state right of way near U.S. 101 may be impacted. The Department requests that the mitigation efforts mentioned above also be implemented for this part of the golf course. We ask that you provide the

information stated in these comments for our review. We look forward to receiving the information at least ten days prior to certification of the EIR pursuant to Section 21092.5 (a) of the California Environmental Quality Act (CEQA).

Should you require further information or have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-5535.

Sincerely,

Timothy C. Sable

TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Philip Crimmins, State Clearinghouse

California Regional Water Quality Control Board

Central Coast Region

Terry Tamminen
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

Internet Address: http://www.swrcb.ca.gov/rwqcb3
895 Acrovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

February 4, 2004

James Rowe
City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

REVISED DRAFT ENVIRONMENTAL IMPACT REPORT COMMENTS – INSTITUTE GOLF COURSE, 14830 FOOTHILL AVENUE, MORGAN HILL, SANTA CLARA COUNTY; SCH # 2000062092

Mr. Rowe:

On December 22, 2003, Central Coast Regional Water Quality Control Board (Regional Board) staff received a copy of the Institute Golf Course Revised Draft Environmental Impact Report (Draft EIR). Regional Board staff has the following comments:

1. Proposed Project – The Regional Board, as a responsible agency, does not support approval of the proposed project. The Draft EIR lists at least twenty-seven significant unmitigated impacts or significant cumulative impacts associated with the proposed project and states a feasible alternative exists (Reduced Impact Alternative) that would avoid or reduce almost all identified impacts in the proposed project to a less than significant level.

2. Reduced Impact Alternative – The Regional Board, as a responsible agency, concurs with the Revised Draft EIR that the Reduced Impact Alternative is a feasible and environmentally superior alternative to the proposed project, as it will avoid or substantially lessen almost all the significant impacts associated with the proposed project and meet the project proponent's objectives.

3. City of Morgan Hill Conditions for Project Approval – Regional Board staff supports many of the City's General Plan Policies, as they parallel our Basin Plan objectives, recommendations, and requirements. The identified Reduced Impact Alternative appears to address many of the City's stated policies. We encourage the City to adopt the Reduced Impact Alternative water quality-related mitigation measures identified in the Draft EIR as conditions for project approval.

4. Specific Draft EIR Comments – Regional Board staff has the following specific comments about the Draft EIR and Reduced Impact Alternative:

a. Phase II Storm Water Regulations (Draft EIR page 8) – Phase II Storm Water regulations took effect in March 2003. Please make this correction on Draft EIR page 8 and any other references to Phase II commencement.

b. Water Quality Certification (Draft EIR page 16) – The Draft EIR mentions "Clean Water Certification;" however, the Regional Board does not have such a requirement. Instead, perhaps the Draft EIR should indicate "Section 401 Water Quality Certification."

c. Biotic Habitats Map (Draft EIR page 29) – It is difficult to distinguish between Coast Live Oak Woodland areas and Ruderal/Bare Ground areas on the map due to the similarity of the colors used to represent these two areas. Please consider changing the colors and/or patterns to clearly identify various vegetated areas.

d. NPDES Permit Requirements (Draft EIR page 70) – Although the Regional Board would likely regulate the subject discharge through enrollment in the General Permit Order No. 01-119, the Regional Board reserves the right to regulate the discharge with a site/discharge-specific permit or other general permit. For clarification, please change the text to specify that the golf course's discharges *may be* subject to Order 01-119..., *another general permit, or a site/discharge-specific permit.* The Draft EIR should require the project proponent to apply for a NPDES permit if their golf course is designed to discharge to surface waters.

e. Fertilizer and Chemical Management Plans – Regional Board staff supports the idea of the project proponent addressing surface water and groundwater quality impacts associated with use of fertilizers and pesticides. However, we would prefer that these issues be addressed together in a single plan (such as a "Golf Course Management Plan") instead of multiple plans as proposed in the Draft EIR. The Plan should be submitted to Regional Board staff for review and comment; however, the Regional Board does not formally 'approve' such documents. The Draft EIR should state that a Plan should be developed, implemented, and sent to the Regional Board for *review* (and to any other agencies for their review and approval, as appropriate). Regional Board staff may submit comments and/or recommendations and request more information and/or changes to the Plan.

f. Monitoring Requirements – The Draft EIR contains several recommended monitoring programs associated with the Reduced Impact Alternative. Please summarize all recommended water quality monitoring in one table. For example:

Recommended Mitigation Water Quality Monitoring

Water Type	Constituents	Frequency
Supply Water	Nitrates, TKN	At least monthly
Receiving Water	Nutrients, Pesticides	At least monthly during rainy season
Storm Water Runoff	Nitrates, Ammonia, TKN, TDS, Chemicals	When there is a discharge
Etc...		

5. Preferred Project – Regional Board staff recommends designation of the Reduced Impact Alternative as the preferred project.

Regional Board staff looks forward to receiving a response to these comments. If you have questions regarding this matter, call **Kimberly Gonzalez at (805) 549-3150**. You may send correspondence to our letterhead address.

Sincerely,

for Roger W. Briggs
Executive Officer

cc: James Rowe, City of Morgan Hill, FAX: (408) 779-7236
Institute Golf Course IPL

CKG\\S:\Storm Water\Construction\Santa Clara Co\312531 Institute Golf Course\2004.02 Revised Draft EIR Comments.doc
File: Storm Water - The TAW L.P. 3 43 C 312531
Task: Storm Water Case Handling

File:
C:\Documents and Settings\kgonzale\Desktop\Template.doc
Task:

1

Santa Clara Valley Water District

Community Projects Review Unit

My Phone Number: (408) 265-2607 ext. 2319

My Fax Number: (408) 979-5635

My E-mail: yarroyo@valleywater.org

Date: 2/4/04

To	Company or Agency	Fax Number
Mr. James Rowe	City of Morgan Hill	779-7236

From: Yvonne Arroyo **Total Pages, including cover sheet:** 4

Subject: Institute Golf Course

Message: The Santa Clara Valley Water District (District) has reviewed the Revised Draft Environmental Impact Report (DEIR) for the subject project, received on December 22, 2003. The District has the following comments on the DEIR:

Pages 51,52 and 53

1. The District agrees with the proposed "water quality setback" of 50 feet from the centerline of Corrallitos Creek and its tributaries for Red-Legged Frog Mitigation, as well as the proposed mitigations for the Riparian Habitat and recommends that the mitigations proposed by the City's consultant be adopted as part of the final Environmental Impact Report (EIR).
2. The District recommends that proposed mitigation measures also include requirements for restoring portions of Corrallitos Creek or its tributaries which were filled in at some time back to their original grades. The Corrallitos Creek Restoration Plan that the applicant has been working on should include and address all the proposed mitigation measures.

Pages 60, 61, 62 and 73, Offsite Flooding and Drainage Issues

3. The District's Hydrologic Engineering Unit has reviewed the post-construction hydrologic and hydraulic analysis prepared by Mattern & Associates, dated May 24, 2002. The analysis was deemed incomplete in addressing the hydrology issues. The report lacked the following:
   - A clear watershed map showing watershed boundaries, existing hydrologic structures, flood inundated areas, pre-development and post-development conditions, etc.

- Inflow hydrograph, routing, outflow hydrograph, resultant storage, outlet works and spillway, operating procedures manual, and maintenance and management safety information for each of the ponds.
- The HEC-1 input file was not provided and the maps were unclear.

4. The District recommends that the mitigation measures proposed by the City's consultant be adopted as part of the final EIR. The DEIR should include a timeline of when this issue will be completely addressed (including modifications to the drainage system, if needed), preferably prior to the onset of the next winter season.

Pages 63 and 74, Soil Erosion

5. The DEIR should also include impacts from and mitigation measures for the existing outfalls into the drainage ditches along Foothill Avenue. The DEIR should address whether adequate energy dissipators were provided to prevent erosion of the drainage swales and consequential deposition of sediment into San Martin Creek.

6. The DEIR should be revised to reflect that a National Pollutant Discharge Elimination System permit for general construction is required for any land disturbance of more than 1 acre, not 5 acres. Since the entire project has already totaled more than the previously 5 acre requirement, and additional work may be necessary, the project proponent will need to maintain and update their permit accordingly and Storm Water Pollution Prevention Plan.

Pages 74 through 79, Water Quality

7. The DEIR identified the significant impacts of the lake/pond water on surface water. However, the District believes the water runoff into the unlined lake/pond system is also a concern for groundwater quality by percolation of the lake/pond water into the groundwater. Water from the lakes/ponds could contain runoff from parking and maintenance areas, nitrates, pesticides and herbicides. The chemicals used to make the lake/pond water clear have the potential to pose a significant impact to groundwater and groundwater quality. Thus, the District recommends that an additional mitigation measure be proposed to line the lakes/ponds with impermeable barriers to prevent the lake/pond water from percolating into the groundwater.

Pages 75 and 76, Nitrogen Loading

The DEIR list several mitigation measures proposed by the City's consultant related to Nitrogen loading. The District has comments on the following mitigation measures:

8. Mitigation Measure—"*Annual accounting of nitrogen application rates to the golf course, including both fertilizer applications and nitrogen content of*

irrigation water." The District believes that the nitrogen content of grass clippings should be accounted as well.

9. Mitigation Measure---"*Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD.*" Spatial and temporal variability of soil nitrogen is large. Soil quick test procedures may do the job, but in view of the amount of sampling necessary for reliable information, a procedure using large area sampling is better. Tissue sampling rather than soil sampling is indicated. Suggest investigating catching grass clippings from one set of mower blades doing one pass down the fairway, and pulling a sample from the catch. Soil sampling can then be limited to situations where tissue sampling reveals a lack of response to applied fertilizers.

10. Mitigation Measure---"*The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.*" District records indicate the Institute Golf Course is fertilized monthly. Slow release nitrogen fertilizer is an unnecessary refinement with a monthly fertilization schedule. It is also more expensive, and the delayed response complicates interpretation.

11. Mitigation Measure---"*Irrigation of the golf course shall be limited to the calculated evapotranspiration rate, plus mineral dilution requirement. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.*" The District recommends clarification be provided here. "Evapotranspiration rate" should be defined as either crop evapotranspiration or potential evapotranspiration. If the latter, that amount of water is excessive. Irrigation according to calculation of crop evapotranspiration needs to be verfied against changes in soil moisture content to ensure calculations are in order. Some soil moisture monitoring equipment is called for on at least one index fairway. Portable equipment is an option.

12. Mitigation Measure---"*The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements.*" The reduction of turf area does not necessarily minimize total fertilizer requirements. Inappropriate rates of fertilization may continue on a reduced area, and this would continue to result in transport of nitrogen to groundwater. Increased management should be emphasized.

13. The District also supports the City consultant's proposed mitigation measures for Water Quality, Flooding, and Soil Erosion.

Pages 81 through 85, Water Supply

14. Groundwater supply resource depletion has been identified as a significant unmitigated impact. The mitigation measures proposed by the City's consultant appear to address groundwater resource depletion, with the exception of the detailed groundwater investigation. While the District recommends that a detailed groundwater investigation be performed to determine the impacts of the increased pumping for golf course irrigation, we believe the results of the investigation would determine the mitigation measures needed. The groundwater investigation

itself is not a mitigation measure, but a means to determine whether mitigation is necessary. We recommend mitigation measures be provided in the event the detailed groundwater investigation identifies significant impacts to local groundwater resources. In addition, since the golf course is currently operating and irrigating, the DEIR should discuss the potential impacts of allowing the golf course to continue increased pumping for irrigation prior to identifying the extent of its effects on local groundwater resources.

15. The western boundary of the project site is along Foothill Avenue, just east of the area being investigated by the District, the Central Coast Regional Water Quality Control Board and the Olin Corporation for the presence of perchlorate. This should be evaluated as it may impact the use of groundwater for domestic water supply on the proposed project site.

Page 116, Cumulative Water Supply Impacts

16. The DEIR indicates that there are significant unmitigated impacts to groundwater supply. The cumulative impacts section should include discussion of other proposed golf courses or other development (possibly induced by the project) which may require substantial water use and subsequently deplete groundwater supplies when considered cumulatively with the project.

We appreciate the opportunity to comment on this document. We look forward to reviewing the final EIR when it is available. Any questions may be referred to me at (408) 265-2607, extension 2319.

Sincerely,
Yvonne Arroyo
Yvonne Arroyo
Assistant Engineer
Community Projects Review Unit

cc: Ms. Elish Ryan, County of Santa Clara Environmental Resources Agency, Parks and Recreation Department, 298 Garden Hill Drive, Los Gatos, CA 95032-7669
Mr. Dave Johnston, Environmental Specialist, Central Coast Region, State of California Department of Fish and Game, P.O. Box 47, Yountville, CA 94599
Ms. Kimberly Gonzalez, Water Resources Control Engineer, Central Coast Regional Water Quality Control Board, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401-7906

County of Santa Clara

Roads and Airports Department
Land Development and Permits
101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2460 FAX (408) 441-0275

January 21, 2004

James Rowe
Planning Manager
Community Development Department
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Subject: Revised Draft Environmental Impact Report (DEIR) for The Institute Golf Course
SCH No: 2000062092

Dear Mr. Rowe:

On January 6, 2004, we received your submittal of the revised DEIR for The Institute Golf Course dated December 2003. The following are our comments:

1. Please submit for our review and comment, the revised drainage analysis to mitigate the localized and downstream flooding problems at Foothill Ave. caused or exacerbated by this project.
2. The DEIR does not include a Traffic Impact Report (TIR) of Charity Golf Tournaments that might occur at the site. It is important that a TIR be prepared to assess traffic impact on County roads and recommend mitigation measures. Submit the TIR for our review and comments.
3. Provide us a copy of the Final Environmental Impact Report for our review and comments.

Thank you for the opportunity to review and comment on this project. Please call me at (408) 573-2462 for any questions.

Sincerely,

Felix Lopez
Project Engineer

cc: MA, SK, TH, RJJ, WRL, RN, file

County of Santa Clara

Environmental Resources Agency
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org

February 11, 2004

James Rowe
Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Subject: Comments on the Revised Draft Environmental Impact Report for the Institute Golf Course (SCH # 2000062092)

Dear Mr. Rowe,

The Santa Clara County Planning Office has received and reviewed the Draft EIR dated December 18, 2003. In general, the County has several concerns regarding the project with respect to regional impacts on wildlife habitat and groundwater supply. Specifically, our comments / and questions are be as follows:

(1) **Land Use:** A listed Threshold of Significance in the Land Use section is "conflict with any land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect."

Previous discussion of consistency between the proposed project and several Morgan Hill General Plan policies adopted to protect rare and endangered animals and their habitat (Page 13, Policy 6a to 6e) shows that the project would conflict with these policies (without mitigation). By virtue of this conflict, the proposed project would also have significant land use impacts, which have not been disclosed in the EIR.

(2) **Agriculture:** Discussion of impacts and mitigation states that the current Williamson Act contract for the property will be canceled as part of the approval of the project. Cancellation of a Williamson Act contract requires that the board / council makes several findings with respect to discontinguous patterns of urban development and the absence of noncontracted lands which could be used for the project. Is the Morgan Hill City Council prepared to approve the cancellation and adopt these findings prior to approval of the PD Rezoning of the project?

(3) **Water Supply:** The County Planning Office is concerned about the possible impacts to water supply for surrounding properties which would result from the project. The EIR states that the project may substantially deplete groundwater resources in the area, including groundwater supplying neighboring off-site wells. In discussing feasible mitigation, the EIR implies that reduction of the amount of irrigated turf could reduce this possible significant impact to a less than significant level. The EIR goes on to state that "While the information currently available indicates that the project could substantially impact groundwater levels, much more detailed studies could modify that information."

The County is concerned that water pumping for the project will adversely impact water supply to surrounding properties under the County's jurisdiction, several of which are in commercial agricultural operation or under Williamson Act. This in turn impacts the viability of agriculture in the region, for which much of this area is currently zoned. The City should fulfill its obligations under CEQA to provide adequate analysis of this matter in order to provide the substantial evidence necessary to make a significance determination (with respect to groundwater depletion).

The mitigation suggested (reduction of irrigated turf) may appear adequate, but is speculative since no modified site plans which include this approach are included with the document.

(4) **Biology / Secondary Impacts:** While the EIR does propose mitigation measures to compensate for the wildlife habitat, wetlands, and riparian which was lost with the initial grading, it does not appear to address the intervening temporal loss. For example, restoration of the Riparian habitat lost is recommended at a ratio of 3:1. While this ratio is commonly used by resource agencies, it does not account for the fact that the riparian was removed over 6 years ago. In order to account for the lost biological value associated with those intervening six years plus the any additional years until revegation begins and is established, it is advised that these replacement ratios (for habitat, wetlands, and riparian) be increased.

In addition, while replacement wetlands, wildlife habitat, and riparian have been recommended, there are no plans which show where and how these will be implemented. These should be included in order to demonstrate that the mitigation is in fact "feasible".

(5) **Mitigation Monitoring & Reporting:** The County has found that in situations which require extensive long-term habitat restoration, it is highly advantageous for the lead agency to develop an in-house post approval monitoring program in order to ensure that the mitigation is in fact implemented. While this responsibility has historically been given to the resource agencies, the lack of funding and staffing has severely limited the amount of oversight they can provide.

The Santa Clara County Planning Office has prepared the *Environmental / Design Guidelines and Standard Development Requirements for Golf Courses* which have been

used in permitting Golf Course facilities. The approaches listed in this document address many of the environmental issues that are being encountered with the proposed project. I have enclosed a copy of these Guidelines for your use in evaluating the proposed project.

Thank you for providing this opportunity to review and provide comments on the Draft EIR for the proposed golf course. Should you have any questions, please feel free to contact me at (408) 299-5792.

Sincerely,

Rob Eastwood
Planner

Cc:
Ann Draper, Director of Planning

County of Santa Clara
Environmental Resources Agency
Parks and Recreation Department
298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org

February 13, 2004

Mr. James Rowe
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Subject: Revised Draft EIR for the Institute Golf Course, File Number UP-99-03 & ZA 03-03

Dear Mr. Rowe,

The Santa Clara County Parks Department thanks you for the opportunity to comment on the Revised Draft EIR for the above referenced project. Per our letter to you dated February 5, 2004, we had requested an extension of time to review the document, as we had not received it until two weeks prior to the close of the review period.

Santa Clara County Parks finds that the Revised Draft EIR for the Institute Golf Course is inadequate because mitigations are not proposed for twenty-four Significant Unmitigated Impacts identified as a result of analysis of Soils and Geology, Vegetation and Wildlife, Hydrology and Water Quality, Water Supply, and Hazardous Materials for the proposed project. Significant unmitigated impacts will have a significant adverse impact on the environment and a wide range of local users, including Santa Clara County Parks.

Impacts to Water Supply

As identified in the Revised Draft EIR for the Institute Golf Course, nearly all local potable water supplies for residential uses within the greater San Martin, Morgan Hill and Gilroy area rely on private and municipal wells that tap into a common aquifer; the Llagas Groundwater Basin. This aquifer is also the principal source of agricultural water supply for the region. As identified in the Revised Draft EIR, the Institute Golf Course project has significant impacts on water supplies for the local region beyond the confines of the project area and no mitigations are proposed as part of the project. Without mitigations addressing impacts to ground water supply as a result of the Institute Golf Course and accompanying conference facility project, potential significant impacts to ground water supply currently serving Coyote Lake-Harvey Bear Ranch County Park could occur.

Existing wells and springs located at Coyote Lake-Harvey Bear Ranch County Park, a public

parkland located one half mile south of the Institute Golf Course on Foothill Blvd., are fed by the Llagas Groundwater Basin. These water sources are vital to the continuation of cattle grazing operations on over 4,000 acres of the open grassland in this park. Potential reduction in the availability of water to support grazing cattle could severely impact the use of cattle grazing as a natural resource and fire management tool. Without adequate water supplies to support cattle grazing in the park, the reduction of fuel loading would be impacted. The incidence of potential fire hazard will increase. As a result, there would be potential safety impacts to park facilities and to the residents in the locality.

The existing wells and springs, in conjunction with other on and off site water sources, have also been identified as viable water sources for future development of the 4,448-acre Coyote Lake-Harvey Bear Ranch County in the recently approved park Master Plan. The Revised Draft EIR for the Institute Golf Course states that monitoring results from off- site wells has identified a significant amount of draw down in the aquifer associated with the pumping of water for the Institute Golf Course. The Revised Draft EIR for the Institute Golf Course has not addressed the potential off site impacts as a result of draw down in the aquifer. If this impact continues without mitigation, it will become significantly greater and cumulative impacts to a wide geographical area will occur.

The Revised Draft EIR states that average daily use of ground water for irrigation purposes is 427,500 gallons per day. This information is incomplete and the Revised Draft EIR is inadequate because no average daily use projections for water use for domestic purposes related to the Institute Golf Course conference facilities are included. In addition, the information provided for average daily use does not include the impact of seasonal spikes of up to 1.3 million gallons per day in summer months when demands on ground water supplies are highest. (Daily use figures for June as stated in Questa Engineering's report in Table WS1, Appendix C of the Draft EIR, January 2003.)

Such impacts to existing local sources are potentially avoidable. Mitigation measures discussed in the Revised Draft EIR but not currently incorporated into the project could be adopted. In addition, the Santa Clara Valley Water District recommends that a detailed groundwater investigation be performed to determine the impacts of pumping large quantities of ground water for use in this project and should be included as a part of the EIR. It is recommended that the project proponents work closely with interested water management agencies, complete an adequate groundwater impact analysis, and offer mitigation measures to reduce the impact to the Llagas Groundwater Basin. In addition, we recommend that the project adhere to the County of Santa Clara Golf Course Design Guidelines for responsible and sustainable golf course development at this site.

Cumulative Water Supply Impacts

Santa Clara County Parks disagrees with the conclusion in the Cumulative Impacts section of the Revised Draft EIR where it states that the proposed project will not contribute to a significant cumulative impact to ground water supply because it converts former agricultural land to an urban land use and urban land uses typically have a lesser demand for ground water. Per the average daily water use figures stated in the Report, the project will use 427, 000 gallons per day or almost 156 million gallons per year on the course alone. As stated in the Draft EIR, only 57 acres of the project site have been identified as Prime Agricultural Land and would have

potential for irrigated row crop farming. The balance of the 192 acre site would most likely be "dry farmed" or used as grazing land if it were to remain in agricultural uses. Thus, it is inaccurate to state that the proposed land use would have a lesser demand on water supply than continuing agricultural use.

We appreciate the opportunity to comment on this document. We look forward to receiving a copy of your Response to Comments and Draft Final EIR. We wish to be included on all future notifications of public review of this project. If you have any questions regarding these comments, please contact Elish Ryan, Park Planner at 408 355-2236.

Sincerely,

Mark Frederick
Manager, Planning and Real Estate

Pacific Gas and Electric Company

Land Services

111 Almaden Boulevard
San Jose, CA 95115

February 4, 2004

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128
Attn: James Rowe
Fax No: 408-779-7236

RE: Review of Revised Draft of Environmental Impact Report (EIR)
For The Institute Golf Course, dated December 2003
SCH No: 2000062092
City's File: ZA-03-03
Location: 14830 Foothill Avenue, Morgan Hill
PG&E File : 40322924-y04-MR –07

Dear Mr. Rowe,

Thank you for the opportunity to review the Revised Draft of Environmental Impact Report (EIR) for The Institute Golf Course at the above referenced location.

PG&E has the following comments to offer:

PG&E owns and operates gas and electric facilities which are located within and adjacent to the proposed project. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access and prevent easement encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities.

The developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocation's require long lead times and are not always feasible, the developers should be encouraged to consult with PG&E as early in their planning stages as possible.

Pacific Gas and Electric Company

Land Services

111 Almaden Boulevard
San Jose, CA 95115

Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.

We would also like to note that continued development consistent with City's General Plans will have a cumulative impact on PG&E's gas and electric systems and may require on-site and off-site additions and improvements to the facilities which supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas or electric transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.

Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing substation and transmission line equipment, expanding existing substations to their ultimate buildout capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions needed to accommodate additional load on the gas system could include facilities such as regulator stations, odorizer stations, valve lots, distribution and transmission lines.

We would like to recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.

We also encourage the Planning Office of the City to include information about the issue of electric and magnetic fields (EMF) in environmental documents. It is PG&E's policy to share information and educate people about the issue of EMF.

> Electric and Magnetic Fields (EMF) exist wherever there is electricity--in appliances, homes, schools and offices, and in power lines. There is no scientific consensus on the actual health effects of EMF exposure, but it is an issue of public concern. If you have questions about EMF, please call your local PG&E office. A package of information which includes materials from the California Department of Health Services and other groups will be sent to you upon your request.

Pacific Gas and Electric Company

Land Services

111 Almaden Boulevard
San Jose, CA 95115

PG&E remains committed to working with City to provide timely, reliable and cost effective gas and electric service to the planned area. We would also appreciate being copied on future correspondence regarding this subject as this project develops.

The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

Should you require any additional information or have any questions, please call me at (408) 282-7401.

Sincerely,

Alfred Poon

Alfred Poon
Land Agent
South Coast Area, San Jose

Attachment

South Valley
Streams For Tomorrow
P.O. Box 1409
San Martin, CA 95046

(408) 683-4330 (voice & fax)

January 29, 2004

Mr. James Rowe
City of Morgan Hill
Community Development Department
Planning Division
17555 Peak Avenue
Morgan Hill, CA 95037

Dear Mr. Rowe:

Comments on Revised Draft Environmental Impact Report for The Institute Golf Course; Dated December 2003

We submit the following comments for consideration by the City of Morgan Hill (City) regarding the Revised Draft Environmental Impact Report (DEIR) for The Institute Golf Course (Project).

1. The DEIR identifies mitigation measures for the potentially significant direct and indirect (secondary) environmental impacts of the proposed Project. Some of these measures are not presently proposed by the Project proponent and are not formally incorporated into the project. Therefore, numerous impacts are not mitigated by the Project as currently proposed. The project would result in numerous unmitigated impacts.

As Lead Agency pursuant to the California Environmental Quality Act (CEQA), the City has the responsibility to ensure that all identified significant impacts are mitigated to a less than significant level. Under CEQA, the City may not approve projects with significant unmitigated impacts (such as the proposed Project) if feasible mitigation measures or feasible alternatives are available that would substantially lessen the project's significant environmental effects. CEQA imposes a substantive duty on the City to avoid or mitigate, to the extent feasible, a project's significant environmental impacts.

The mitigation measures proposed in the DEIR, but not yet incorporated into the project, are presented as feasible mitigations which, if adopted and implemented, would avoid or reduce impacts to a less than significant level. Therefore, to comply with the CEQA substantive duty to avoid or mitigate impacts where feasible mitigations are available, the City should require as "conditions of project approval" those mitigation measures proposed in the DEIR for impacts presently identified as significant unmitigated impacts.

We advocate that the proposed mitigation measures for significant, unmitigated direct and indirect (secondary) impacts be required by the City **as conditions of project approval**.

Because the existing golf course (Project) was illegally constructed in violation of City permit requirements (more than tripling the disturbance footprint of the original authorized work area) and constituted a violation of CEQA at the time of unlawful grading and construction, the City should now hold the project proponent to a high level of impact mitigation and CEQA compliance. This would be accomplished by requiring mitigation for all impacts presently identified in the DEIR as significant and unmitigated.

2. Alternative mitigation measures are identified for direct impacts to red-legged frog, California tiger salamander, and western pond turtle (DEIR page 50 - 53, Package I and Package II) and for secondary (indirect) impacts to red-legged frog and California tiger salamander (DEIR page 112 - 115). The basic distinction between the alternative measures in both cases is the choice of "on-site" or "off-site" mitigation.

In our opinion, adoption and implementation of either alternative in each case would reduce the subject impact (direct or secondary) to a less than significant level. The paramount need is for the City to select one of the alternative mitigation scenarios for direct impacts and one of the alternative mitigation scenarios for secondary impacts as conditions of project approval to comply with the City's CEQA duty to mitigate project impacts.

In general, "on-site" mitigation has higher acceptability because it provides benefits to those local habitats and wildlife populations actually impacted by project development, and usually provides more certainty that the impacted habitats and wildlife populations will remain viable. "Off-site" mitigation becomes acceptable in the circumstance where on-site mitigation would result in demonstrably inferior habitat conditions or limited benefit to local wildlife. Off-site mitigation benefits the habitat types and the wildlife species affected by the project, and assists in maintaining species population levels. The major drawback for off-site mitigation is that it does not assure retention and viability of the local habitats and wildlife populations actually impacted by the project.

Typically, we would be a strong advocate for the inclusion of on-site mitigation into the design of a proposed project. Unfortunately, this is not a typical project: the golf course has been built and the opportunity to influence the original design has been lost. As a consequence, there has been loss and degradation of local sensitive species habitats and direct and indirect impacts to local sensitive species populations.

The proposed on-site mitigation for sensitive species, Package II, includes a habitat protection buffer measuring 200 feet from the edge of ponds and centerline of creeks. Such a requirement would take a huge amount of land from golf use and probably make the existing course infeasible. Such action would appear to be contrary to the project objective of operating an 18-hole golf course (DEIR page 7) and the substantial desire in the community to retain the existing course.

Thus, for this atypical project, **we advocate the City adopt Package I, the off-site alternative**. Along with other essential measures, this would implement the mitigation recommendations of the U.S. Fish and Wildlife Service, which includes purchase and management of 51.2 acres of off-site sensitive species habitat.

To mitigate identified secondary impacts to sensitive species, **we advocate the City adopt the off-site mitigation alternatives** for California red-legged frog habitat/aquatic habitat : Measures 2, 3, 4, and 5 (DEIR page 112-114) and California tiger salamander aestivation/breeding habitat: Measure 4 (DEIR page 114-115).

3. The DEIR identifies that the proposed project will result in significant cumulative impacts to special-status plant species, special-status animal species and surface water runoff. Specific mitigation measures have been identified that would reduce corresponding project-level impacts to a less than significant level; however, the measures are not proposed by project proponents. The DEIR concludes that these same project-level measures also would reduce the subject cumulative impacts.

This determination may be correct, but the public and decision-makers cannot make a "leap of faith" to accept such a determination without supporting evidence, analysis or rationale. As presented, this is a conclusory statement without support.

Although the proposed mitigation measures may reduce, minimize or compensate for impacts at an individual project level of assessment, no evidence is presented that these same measures will reduce the project's contribution to cumulative impacts to less than significant level. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

The City has an obligation pursuant to CEQA to examine reasonable, feasible options for mitigating the Project's contribution to cumulative impacts.

The draft Final EIR should provide supporting evidence for the City's stated conclusion that the project-level mitigations identified in the DEIR would also mitigate cumulative impacts to a less than significant level. Such evidence would allow the public and decision-makers to discern the analytic approach the City employed in connecting evidence to the conclusion, and to determine whether the conclusion is, in fact, correct. Supporting evidence, analysis, or rationale should be provided in the draft Final EIR.

4. As previously stated, the City has a duty pursuant to CEQA to avoid or mitigate the project's significant environmental impacts. The Project as proposed in the DEIR has numerous significant unmitigated impacts. However, according to the DEIR, feasible mitigation measures have been identified for all of the project's identified significant unmitigated direct, indirect (secondary) and cumulative impacts, with the exception of cumulative loss of agricultural land. On its face, the DEIR has determined that identified impacts, with one exception, can be mitigated to a less than significant level. Therefore, there is no justification in the DEIR for the City declining to adopt feasible mitigations for one or more impacts and approving a project that may cause significant impact(s), other than the cumulative loss of agricultural land. There are no overriding considerations in the DEIR.

5. At the January 27, 2004 Planning Commission Workshop on the DEIR, the project proponent stated an intent to provide "new information" to the City regarding certain impacts and currently proposed mitigation measures. Obviously, this information has not yet been reviewed by the City, nor included in the DEIR, nor reviewed by the public.

If significant impacts currently identified in the DEIR are redefined as less-than-significant and/or new mitigation measures are included in the draft Final EIR as a result of the proponents "new information", the draft Final EIR must explain, supported by substantial evidence, why these modifications were made, why original mitigation measures are less desirable, and why new measures are equivalent or better than the original.

If substantial new information, including new mitigation measures, is included in the draft Final EIR, the City may be required to recirculate the new portion of the document for public review and comment pursuant to CEQA Guidelines Section 15088.5. Since the City has already gone through one recirculation process for this project EIR, we hope the City will take great care in acting upon any "new information" submitted by the project proponent. Actions that would trigger the CEQA EIR recirculation requirement should be avoided.

Thank you for the opportunity to comment on the subject DEIR. If you have questions about our comments, please contact me at the letterhead address or telephone number (408) 683-4330 (voice and fax).

Please send us a copy of your response to comments and draft Final EIR. Also, please send us timely notice of any public meetings or hearings on the Project and/or the EIR.

Sincerely,

Keith R. Anderson

Keith R. Anderson
Environmental Advocate

cc: Mr. Jeffrey S. Lawson
Attorney at Law
Silicon Valley Law Group

City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

February 3, 2004

To Whom It Concerns,

As representatives for the San Martin community, The San Martin Neighborhood Alliance (S.M.N.A.) is actively working towards protecting the rural atmosphere, vitality, and quality of life for San Martin residents. Although we support positive controlled growth, we are concerned with projects that may adversely impact the lives of the community at large.

We have reviewed the recent release of the DEIR for the American Mathematics Institute Golf Course, dated December 2003, and we are writing to address the proposed AIM project and its impact to the community. The proposed AIM project is surrounded by San Martin property owners who will bear the direct brunt of its impact.

The San Martin Neighborhood Alliance finds the following impacts deeply concerning and requests the City of Morgan Hill address, mitigate and monitor each for compliance prior to the issuance of any further permits or zoning changes. They are as follows:

1. Off-site Flooding and Drainage

The DEIR concludes that the AIM project will exacerbate existing flood conditions, causing worse and more frequent flooding problems on the roadway and on other nearby properties. In order to mitigate the localized and downstream flooding problems at Foothill avenue caused or exacerbated by the project, the City of Morgan Hill should require the project proponent to re-design the drainage systems for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions. The city of Morgan Hill needs to require that the project proponent make all of the necessary adjustments and changes as specified in the DEIR dated December 2003 on page 73 so as to alleviate the impact to the surrounding community.

Without full mitigation, this finding would be inconsistent and in conflict with the community development goal #22 (Minimal local drainage problems), the public Health and safety goal #4 (The least possible damage to persons and property from flooding) and

the Economic Development goal #1 (policy 1H) in the City of Morgan Hill's General Plan dated July 2001.

2. Soil Erosion

The DEIR dated December 2003 concludes that erosion and sedimentation impacts from the proposed project would result from construction on the site. Also noted, is that it is likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. The city of Morgan Hill needs to require that the project proponent be required to implement all of the mitigation measures as stated on pages 73-74 in the DEIR dated December 2003 for soil erosion. The city of Morgan Hill must also require on-going inspections so as to verify full compliance of these procedures by the project proponent.

Failure to mitigate these findings will result in a conflict of Open Space and Conservation goal #6 of the City of Morgan Hill General Plan dated July 2001.

3. Water Quality

It is vitally important that the City of Morgan Hill preserves and protects the ground water supply because of the nature of the area in which the surrounding properties obtain their sole source of water through private wells. Numerous significant impacts to water quality are noted throughout the DEIR dated December 2003. Any factor contributing to the degradation of water quality needs to be addressed and fully mitigated. The city of Morgan Hill must require the project proponent to fully implement all of the mitigating processes and procedures as stated on pages 74-78 of the DEIR dated December 2003. The city of Morgan Hill must also require on-going inspections so as to verify full compliance of these procedures by the project proponent.

Failure to fully mitigate the findings would be inconsistent and in direct conflict with the Public health and safety goals #5 and #6 and the Regional Coordination Goal #2 of the City of Morgan Hill General Plan dated July 2001.

4. Groundwater Resource Depletion

The city of Morgan Hill needs to warrant that the project proponent will not deplete the groundwater supply. Based on data supplied by the project proponent and stated in the DEIR dated December 2003, water demand for golf course irrigation is estimated to average approximately 437,500 gallons per day. It is stated also that the combined yield of the existing three on-site wells is sufficient to meet the irrigation demand of the proposed project but it will however substantially increase the amount of water extracted from the groundwater basin as compared with the pre-development conditions and will greatly exceed the amount of groundwater recharge that occurs locally. Therefore, the city of Morgan Hill needs to require that the project proponent implement the measures so as to warrant adequate water supply to the surrounding community now and in the

future. The city of Morgan Hill must also require on-going inspections so as to verify full compliance of theses procedures by the project proponent.

Failure to fully mitigate these finds would be in conflict with Community development Goal #21 and the Open Space and Conservation goal #7.

5. Traffic Impacts

The means of arriving at the level of impact to road traffic in the area is inadequate. The surrounding area is comprised of quiet rural residential property with very little traffic. Traffic impacts need to be studied based on increased traffic flow compared to pre-development traffic flow and the quality of life impacts on the surrounding property owners.

Additionally, the DEIR dated December 2003 does not take into account the increase in traffic flow from numerous deliveries for services that travel to and from the project that are associated with conventions and affairs. The City of Morgan Hill needs to warrant that project proponent will not be permitted to hold large-scale activities such as golf tournaments at the site.

6. Construction Noise

Since the project is located in a quiet rural residential area, the city of Morgan Hill needs to adopt and require the project proponent strictly adhere to the measures set forth on page 91 in the DEIR dated December 2003 during all phases of construction.

7. Odors

The city of Morgan Hill must not allow the piling of grass clippings and debris on the property so as to not produce any foul odors for the surrounding community residents.

8. Views

The project proponent has planted thousands of trees along the berm on Foothill Avenue, which obstructs the hillside view from the nearby property owners and may cause a loss in property values. The city of Morgan Hill should require the project proponent to thin the tree density along Foothill Avenue to restore the view for the surrounding property owners. Failure to fully mitigate this concern would result in a conflict with the ideology regarding hillsides in Morgan Hill General Plan (page 86) that states," The slopes that flank Morgan Hill have played a major role in shaping the city. They have kept development primarily on the valley floor, provided a scenic backdrop for the community and open areas in residential projects below them, and generally have enhanced property values. Maintaining open views of the hillsides, as well as preserving their important resources, are city priorities".

It is important that the city of Morgan Hill require the project proponent to follow all local, county, state and federal laws and ordinances and hold it accountable in order to maintain harmony within the community it is impacting. The San Martin Neighborhood Alliance looks forward to working with the city of Morgan Hill and the American Mathematics Institute Golf Course towards the betterment of our communities.

Respectfully Submitted,

San Martin Neighborhood Alliance Board of Directors

Sylvia Hamilton, President

Barry Shiller, Vice President

Denise Matulich, Secretary

Roy Froom, Treasurer

Connie Ludewig, Director

Curtis Burchfiel, Director

FROM : Judith and Robert Fenerty FAX NO. : 4083786272 Feb. 04 2004 05:55PM P1

California Native Plant Society

February 4, 2004

PLANNING DEPT.
FEB 04 2004
CITY OF MORGAN HILL

James Rowe
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: Revised Draft Environmental Impact Report: "The Institute Golf Course"

Dear Mr. Rowe:

The Santa Clara Valley Chapter of the California Native Plant Society has reviewed the Revised Environmental Impact Report for "The Institute Golf Course," located in the City of Morgan Hill. We appreciate the opportunity to comment on this revised document. Our concerns are as follows:

Special-status plant species: Since the grading of the golf course was apparently completed prior to the completion of adequate botanical surveys, it is impossible to determine what native plants associated with serpentine soils were present. However, based on the conclusions of the US Fish and Wildlife Service and the California Department of Fish and Game that serpentine soils were found on the site prior to grading, we agree that it is likely that endemic plants associated with these soils were also present (page 107). Many endemic plants found in these habitats in Santa Clara County are listed as rare, threatened or endangered. This habitat is highly diverse, biologically unique and continually under threat from development, invasive plants, and atmospheric change.

Therefore, we urge the adoption of mitigation measures to reduce the secondary and cumulative effects of the loss of special-status plant species (serpentine) which were almost certainly present on the site before the grading took place. As stated the REIR, the only available mitigation measure at this point is off-site compensation through the purchase of equivalent acreage of high-quality serpentine habitat. CNPS policy (see attachment, page 4) lists off-site compensation as the least desirable option for mitigation for impacts to rare, threatened and endangered plants; but if this option is necessary (as in this case) then the ratio of acquisition to loss should exceed 1:1, and scale higher depending on the rarity of the species.

Since the number and of rarity of serpentine plant species present on the site before construction is unknown, we recommend the acquisition of *at least* the recommended 51 acres listed in the mitigation measures listed on page 111 of the REIR. High quality serpentine habitat is available in several areas of southern Santa Clara County, and this mitigation measure is entirely feasible and appropriate, particularly considering the size of the habitat loss. We also urge that funding is made available to manage the acquisition in perpetuity – the management plan should include at least provisions for invasive plant control, monitoring of population health, and control of public access.

California Native Plant Society

Riparian habitat: As above, since the loss of riparian habitat has already occurred, we also support the replacement and restoration of this habitat. This mitigation measure (page 111-112), which includes the replacement of 0.5 acres of riparian habitat with a 1.5 acre restoration site is an entirely feasible and appropriate mitigation measure. Numerous other projects, including several golf courses in Santa Clara County, have required similar riparian restoration – there is no reason a similar effort should not be undertaken here.

Native trees: Since apparently few if any native trees have been planted on the course at this point, the mitigation measure (page 112) recommending native tree replacement at 5:1 ratio should be required. Most other projects of this size permitted in Santa Clara County have required some ratio of native trees to be planted as landscaping. Native trees and shrubs often require less water and maintenance than exotic trees, and they can provide greater habitat and food sources for native wildlife and birds.

Sincerely,

Judith C. Fenerty
Vice President
Santa Clara Valley Chapter, California Native Plant Society

Attachment: California Native Plant Society, "Policy on Mitigation Guidelines Regarding Impacts to Rare, Threatened and Endangered Plants." Revised April, 1998.

cc: Georgia Stigall, President, Santa Clara Valley Chapter CNPS
David Chipping, Conservation Director, CNPS

FROM : Judith and Robert Fenerty FAX NO. : 4083786272 Feb. 04 2004 05:12PM P1

California Native Plant Society

POLICY ON MITIGATION GUIDELINES REGARDING
IMPACTS TO RARE, THREATENED, AND ENDANGERED PLANTS
California Native Plant Society Rare Plant Scientific Advisory Committee
(February 1991, revised April 1998)

This document is intended to guide in the assessment and mitigation of impacts to rare and endangered plants. It supports the California Native Plant Society Policy Regarding Mitigation of Impacts to Rare and Endangered Plants (Appendix A). The goals of the policy are to prevent decline of rare plants and their habitats and to ensure that effective rare plant preservation measures are implemented.

In California the right to develop land is subject to regulation by public agencies that have discretionary control over project approval. The National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act of 1970 (CEQA) require project applicants to disclose, consider and avoid or reduce significant project impacts to rare or endangered species. Environmental documents required under those laws contain the project disclosures and evaluations and are available for public review.

EVALUATION GUIDELINES

Before identifying mitigation options for a project, the vegetation types, rare plants and habitats, and specialized biotic resource areas must be identified and the project impacts described and assessed. The Society recommends following the Department of Fish and Game's Guidelines for Assessing Effects of Proposed Developments on Rare and Endangered Plants and Plant Communities (Appendix B). An important aspect of the evaluation is determining whether an impact is significant as defined by CEQA and NEPA. Under CEQA, for example, an significant impact is one which would produce a substantial, or potentially substantial, adverse change in the environment.

MITIGATION GUIDELINES

The Society endorses the mitigation concepts in the California Environmental Quality Act, Statutes and Guidelines (1986) because they may be applied specifically to rare plants. The types of mitigation for environmental impacts that are listed in CEQA (Section 15370) are:

(a) Avoiding the impact altogether by not taking a certain action.

(b) Minimizing impacts by limiting the degree or magnitude of the action.

(c) Rectifying the impact by repairing, rehabilitating or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

These mitigation measures can be applied to a variety of environmental impacts but are not always appropriate to mitigating rare plant impacts. Mitigation measures should be developed on a site-specific basis in consultation with appropriate resources agencies. Under existing laws, a project applicant or a local lead agency may have the responsibility of consulting with public regulatory agencies on matters relating to project impacts on rare species.

For rare plants, effective mitigation options that can avoid or reduce impacts may be limited. The use of more than one measure may be necessary depending upon the type of project and the factors that make plant species rare (e.g., unusual soils, microclimates, or water regimes). Each project must be individually evaluated to determine which mitigation method or methods will avoid or reduce impacts defined by CEQA or NEPA as significant to a less than significant level. Because the life history and ecological

information needed to judge whether mitigation measures are adequate is often lacking, additional biological research may be necessary prior to mitigation design and/or implementation in order to determine which measures will be most appropriate.

Of the five mitigation types in the California Environmental Quality Act, the California Native Plant Society fully supports those which avoid net reduction of population size or species viability. For most plant species this requires the protection of habitat essential to the survival of the species. In some instances, this also requires that impacts be fully avoided in order to prevent a significant impact (i.e., a net loss of plant numbers, habitat, or genetic variability essential to the future existence and recovery of the species). Alternatives such as site restoration and off-site introduction are generally unproven, and usually unsuccessful.

Avoidance:

Impacts to rare plants may be avoided by: (1) pre-project planning and design; (2) reconfiguring an existing project design; or (3) adopting the no-project alternative. Project planning and design measures to avoid impacts may include arrangement of facilities on-site to avoid sensitive features. Additional measures are almost always required to protect avoided sites from impacts associated with construction and operation of the project. Such protection can include, but is not limited to, fencing, open space or conservation easements, and transfer of development rights. See Appendix C for a brief discussion of conservation easements.

Each of the other mitigation alternatives included in the CEQA guidelines involves the acceptance of a net loss and/or use of transplantation, artificial propagation, seed transfer, or habitat restoration. The Society believes that these methods do not fully mitigate for significant impacts to rare plants and their habitats for *three reasons*:

(1) These alternatives compromise and ultimately negate mitigation by allowing net losses of rare plant populations and habitat. Mitigation must, according to CEQA, fully offset or reduce significant impacts to a less than significant level.

(2) Most rare plants are restricted to their known locations because they have specialized, poorly understood, habitat requirements. Creating the exact environmental conditions that these plants require may not be possible.

(3) The Society does not endorse alteration of naturally occurring plant communities through transplantation because the methodology for most rare plants is untested and therefore unreliable and because most past attempts have ultimately failed.

Although the Society does not endorse significant net losses of rare plant numbers or habitat, we recognize that where such losses are allowed or are deemed unavoidable, off-site restoration, compensation, transplantation or other salvage methods should be attempted to enhance degraded populations or provide for partial survival of the sacrificed population. Such measures also provide additional knowledge of the species' horticultural and ecological requirements. Such measures should never be performed so that an otherwise unaffected population is in any way jeopardized, for example by genetic contamination.

Mitigation alternatives other than avoidance are discussed below. These should be used alone or in combination to reduce impacts to less than significant levels. They should also be used in conjunction with monitoring and long-term management agreements.

MITIGATION GUIDELINES PAGE 3

Reducing Impacts:

The significance of impacts may be minimized by reducing the size of the project (i.e., partial avoidance) *and by locating the project in the least environmentally sensitive area. Areas where impacts are avoided* should be surrounded by buffer zones where impacts are absorbed, and set aside and permanently protected in conservation or open space easements. Efforts should be made to salvage portions of the population that will be lost.

Restoration:

Restoration can be used to mitigate impacts from projects approved prior to environmental regulations, or impacts allowed through a "statement of overriding considerations."

Depending upon the degree of impact, habitat restoration may be as simple as removing debris and controlling public access. In more complex situations, however, partial or total restoration of degraded habitat may require extensive revegetation, and soil protection and stabilization programs. Restoration must be tailored to the specific project site based on the habitat and species involved. General guidelines for restoration projects involving rare plants are discussed in Appendix D.

Reduction Over Time:

Impacts may be significantly reduced or eliminated by controlling public access and by fencing or staking the habitat area to prevent accidental intrusion into the site. Monitoring rare plants and habitats during all phases of a project will help ensure that construction and operation activities do not encroach on protected habitat.

When project actions have ended, restraints may or may not be removed depending on the completed project's potential for long-term impacts on the sensitive area. In most instances, control of public access to sensitive habitat sites needs to be continued beyond the construction phase of an individual project, especially in moderate and high density development areas. Public education about the value of the protected resources should also be considered for these areas.

Attempts to reduce or eliminate impacts over the life of the project should be required for all projects if the potential exists for secondary impacts due to human access; mitigation agreements that require placement of a conservation or open space easement on the mitigation site should be considered to implement this measure.

Off-site Compensation:

Compensating for the impact by protecting substitute resources or environments has been used in some instances to mitigate unavoidable impacts. In most instances off-site compensation does not fully reduce impacts to an insignificant level because a net loss of individuals or habitat that supports a natural self-sustaining rare plant population results. In spite of this, off-site compensation is a useful tool under specific circumstances where other mitigation alternatives cannot be applied or do not fully mitigate significant impacts.

Off-site compensation has been approached in several different ways, including: 1) permanent protection of an existing off-site native population; 2) permanent protection of an off-site introduced population; 3) a combination of 1) and 2); or 4) mitigation banking.

Determining habitat value for off-site compensation is difficult. The size of the acquisition will vary depending upon the type, condition, extent and rarity of the habitat and species. In any case, the acquisition and permanent protection of an alternative parcel does not alter the fact that the loss of the

initial site brings the rare habitat and species one step closer to ultimate extinction. Species preservation is greatly enhanced when plants are protected at a number of separate sites. Although the permanent protection of a vigorous, self-sustaining population of the species tends to reduce the endangerment potential of the species at that particular site, it does not necessarily fully compensate for the loss of the habitat known to support a viable population. To further reduce the endangerment potential for the species and habitat, the ratio of acquisition to loss must in most cases exceed 1:1 for any species. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats. In addition, enhancing off-site compensation areas (e.g., reducing grazing or OHV impacts) can help to more fully compensate for the net loss of plants at a project site.

If transfer of the threatened population is being attempted, an ecological study of the site, including an inventory of rare species, is needed to identify the feasibility of introduction. Genetic contamination can occur by mixing of populations of the rare plants and needs to be avoided, as does hybridization between the rare plant and close relatives that could occur at the introduction site. In no case are unthreatened populations to be jeopardized by the transfer of genetic material from the threatened site. If the compensation site is considered suitable, acquisition or other permanent protection efforts are required to ensure adequate long-term protection, and therefore to mitigate for a net loss of rare plants or habitat. A propagation program should be developed for the salvage and transfer of rare plant populations from the initial parcel before initiating any activities. Permits may be required from California Department of Fish and Game (DFG) or the U.S. Fish and Wildlife Service. Propagation methods for the salvaged population must be developed on a case-specific basis. The propagation program schedule must provide adequate lead time to plan and carry out transfer at the correct time of the year. In order to serve as mitigation, the transfer must be successfully completed before the project's construction activities eliminate plants or habitats. Maintenance and monitoring programs which include the collection of data to document degree of success should also be developed for the compensation site to ensure the transplanted population is self-sufficient and thereby demonstrate success.

MITIGATION IMPLEMENTATION

The mitigation design, implementation techniques and reporting procedures must be clearly documented. Responsibilities of the landowner/applicant, contractors, and agencies, and criteria that define successful mitigation, should be placed in writing to prevent later confusion or disagreement. The DFG Plant Conservation Program has prepared a mitigation plan annotated outline that includes the basic information needed to develop a mitigation plan for State-listed plant species that would be acceptable to the DFG. This document discusses important considerations in designing appropriate mitigation and monitoring plans and establishing appropriate performance criteria, and should be consulted when developing mitigation for impacts to any rare plant species.

Mitigation agreements entered into as a condition of a discretionary permit must contain assurances of implementation, monitoring and maintenance. Permits for development generally require a mitigation plan prior to approval. Project construction is sometimes completed before mitigation is fully implemented, especially where restoration or revegetation is involved. In these and related instances mitigation commitments should be guaranteed by a negotiable performance security. The amount of the negotiable security should be large enough to complete the mitigation and to purchase other rare plant habitat in the event the applicant fails to successfully complete the work in accordance with the approved mitigation agreement.

Clear criteria should be included in the mitigation agreement to define the conditions under which the mitigation measures are to be considered complete or successful, so that the performance security may be returned. Any mitigation effort requiring manipulation of plants or of habitats should be monitored for success or failure for a minimum of five years before relinquishing the performance security. The duration of the evaluation period must be based on the biological constraints of the species involved.

MAINTENANCE AND MONITORING IMPLEMENTATION

Maintenance and monitoring of rare plant populations and habitats are essential even where these are "protected" by mitigation measures. Monitoring enables project applicants and regulatory agencies to document compliance with mitigation agreements. Monitoring also enables scientists to gather valuable knowledge on the effectiveness of rare plant mitigation methods. The financial responsibility for monitoring and maintenance of rare plant populations and habitat is typically that of the project applicant. In all cases, monitoring should be conducted by an experienced botanist. Maintenance responsibilities must be clearly stated in contractual agreements to eliminate any confusion during future maintenance and monitoring.

Maintenance must consider the ecological needs of the species and habitat and the types of mitigation used. Where undisturbed habitat is set aside, maintenance may consist of little more than controlling public access, maintaining fences, or periodic weed removal. Restoration and revegetation programs may require more complex maintenance programs. For example, invasive non-native plants may require specialized control measures to keep them from spreading; herbivores may also need to be controlled to protect the native vegetation.

Monitoring programs must be developed to meet the needs of the specific mitigation program. For example, it may be necessary to monitor the progress of construction activities, if these activities have the potential to damage rare plant habitat. Monitoring of restoration and revegetation projects is essential to document success or failure and identify areas where additional work is needed. Monitoring undisturbed sites that have been set aside and are not likely to suffer direct or cumulative impacts may require only periodic visits to determine if easement violations have occurred. Requirements to correct violations should be described in the conservation easement or mitigation agreement.

In the past, mitigation for many approved projects was not properly implemented and agencies failed to enforce compliance by project developers. To rectify this, legislation passed in 1989 (AB 3180, Cortese) amended CEQA by adding section 21081.6 to allow California agencies to require monitoring of mitigation measures that were defined for a given project. The features to be monitored must be outlined in a formal monitoring plan which must be sufficient to identify failures in mitigation throughout the life of the project, not just during the construction phase. Agencies can enforce compliance with monitoring plans through several means, including specifying penalties for failure to meet monitoring obligations, through the use of existing police power such as fines or restraining orders, and/or by requiring a performance security of the project applicant.

Monitoring a conservation easement is the responsibility of the easement holder, whether this is a nonprofit organization or a public agency. The easement holder is also responsible for seeking redress for violations of the conservation easement contract.

CONCLUSION

The Society supports project alternatives that completely avoid significant project impacts to rare and endangered plant species and their habitats. In cases where other mitigation alternatives are approved, mitigation plans should be designed based on the specific requirements of the species and habitat involved. Although the current limited understanding of the ecological requirements for most rare species makes this task difficult, the use of preliminary ecological studies in mitigation planning will help to develop successful mitigation programs. Emphasis must be placed on conserving not only the rare plant but its habitat. The increased awareness of the need for solutions to problems of human impact on the environment and endangered species is encouraging. This awareness and concern has led to the participation of many agencies, conservation organizations, and concerned individuals in an effort to develop the criteria needed for rare plant protection. The California Native Plant Society has dedicated itself to helping realize this goal, and is always available to assist private individuals, local governments, public agencies and others in designing truly effective mitigation measures. Some of the references cited

In the bibliography contain information relating to studies of specific rare plants and mitigation implementations for specific development projects.

ACKNOWLEDGEMENTS

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COMMITTEE FOR
GREEN FOOTHILLS

Santa Clara Valley Audubon Society
Founded 1926

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Re: EIR Comments on the Institute Golf Course, SCH# 2000062092

Dear Mr. Rowe,

On behalf of the Committee for Green Foothills ("CGF") and the Santa Clara Valley Audubon Society ("SCVAS"), we submit the following comments on the Institute Golf Course Revised Draft EIR ("RDEIR").

CEQA requires the City to propose and describe mitigation measures to minimize significant environmental impacts identified in the EIR. Cal Pub. Res. Code § 21002.1(a); 14 Cal. Code Regs. § 14126(e). Mitigation includes actions to avoid impacts altogether, minimize impacts, rectify impacts, reduce impacts over time, or compensate for impacts by providing substitute resources or environments. 14 Cal. Code Regs. § 15370.

The City cannot legally approve the Institute Golf Course on the basis of the RDEIR if the City fails to require any of the mitigations described in the RDEIR,[1] or if the City fails to include the Integrated Turfgrass and Pesticide Management Program ("ITPMP") as described in the attached comment letter from Certified Golf Course Superintendent Kenneth M. Harp. All the RDEIR-identified mitigations, as well as the ITPMP (collectively, "mitigations") are feasible and necessary to minimize the significant impacts from the Institute Golf Course. Cal Pub. Res. Code § 21002.1(c). Approval without including all the mitigations as conditions of approval would therefore violate the CEQA requirement to mitigate impacts where feasible. Id. In addition, approval of the project without including the ITPMP would violate CEQA because the ITPMP is a feasible mitigation measure that would minimize water quality impacts and therefore must be analyzed in the RDEIR, which has not occurred. 14 Cal. Code Regs. § 15126.4(a)(1)(B).

This letter begins with a section of general comments on the RDEIR, and then follows with a separate section of comments on specific sections of the RDEIR.

General Comments

1. The RDEIR fails to present any evidence to suggest that any of the proposed mitigations are not feasible. The City therefore cannot use infeasibility as a basis for rejecting a

[1] In situations where the RDEIR suggests alternative mitigations, such as the "Mitigation Measure Packages" on pages 50-53, the City would be acting illegally if it fails to require at least one of the proposed alternative mitigations as a condition of approval for each situation in which the RDEIR has proposed alternative mitigations.

mitigation unless it provides evidence of infeasibility for analysis and comment by the public and by responsible agencies and then recirculates the RDEIR.

2. The only evidence in the record on feasibility of mitigation demonstrates that all the mitigation is feasible, beginning with the fact that the staff and experts developing the RDEIR would not have wasted the effort of proposing mitigations they considered infeasible. The RDEIR fails to indicate whether the proposed mitigation measures not presently incorporated into the proposed project are measures that are commonly used elsewhere, but we are familiar with these types of mitigation and we know that they have been used elsewhere. Responses to this comment should indicate for each mitigation measure whether the experts who have devised these mitigations have seen them used elsewhere. CGF and SCVAS have reviewed many development projects, including golf course projects, and the proposed mitigations are not exceptional in any manner, and therefore have been found to be feasible in many other circumstances. As seen in the attached letter, Golf Course Superintendent Harp is familiar with applying these types of mitigations to golf courses and knows them to be feasible for golf courses. The only "exceptional" aspect of this particular project is the degree of uncertainty caused by the fact that the applicant harmed the environment first, and then initiated the steps for environmental analysis. The fault for that uncertainty rests with the applicant, as should the burden of rectifying the problem of the harm it caused.

3. Some of the proposed mitigation measures will have the effect of reducing the amount of irrigated turf or require the redesign of the course layout. This effect in no way makes the mitigations infeasible. As noted in the RDEIR, this golf course has over two-and-a-half times the amount of irrigated turf as other courses in the region. RDEIR at 84 (50 irrigated acres elsewhere versus 128 acres for this course). As noted in the letter by Golf Course Superintendent Harp, this course is on a parcel that is over 50% larger than many parcels used for golfing, which increases the flexibility in designing the course layout. Therefore, redesign is not a problem with respect to feasibility. Finally, many of the mitigations are overlapping - buffer zones around water bodies protect against many environmental impacts, and the need to reduce total irrigated turf in order to protect water supplies makes buffer zones all the more sensible. Simply put, there is plenty of room for all the mitigations proposed in the RDEIR.

4. Economic factors should play a limited role in restricting the "feasibility" of proposed mitigation measures. The project proponent has illegally constructed and maintained a massive course without regard to its costs, so mitigation measures that might be considered expensive for "bare-bones" golf course are appropriate here. This is clearly an attempt to construct a "high-end" golf course. The level of effort the applicant should put into mitigating its significant impacts should be commensurate with the scale of the project. The applicant has not spared any expense in creating a golf course that it wants, so the applicant should accept comparable levels of expenses in mitigating the damage the golf course is causing to the environment. If economic reasons are cited for infeasibility of mitigation measures, economic data to support that assertion must be provided to the public and responsible agencies for comment.

5. The applicant cannot rely on the fact that mitigation measures may now be more

expensive or difficult to construct than they would have been if the applicant had not broken multiple laws and constructed the course before applying for its permit. The City must not reward the applicant for its illegal action.

6. Many of the mitigation measures will result in lower maintenance costs for the course because they require the applicant not to mow, fertilize, or spray pesticides on or near sensitive resources such as streams and ponds. To the extent that economics plays a role, these economic savings are additional reasons why the mitigations are feasible.

7. By creating on-site natural habitats, the mitigations will significantly improve the aesthetics of the course. Someday, golf course users and neighbors will thank the City for requiring the natural habitat improvements.

8. The project description states the golf course is a private course for the use of non-professional golfers, specifically for recreational use by mathematicians at an associated institute. This description means that mitigation measures are feasible even if the mitigation changes the course in a way that makes it less attractive for professional tournaments. If the mitigation measures proposed are similar to those used at other, non-professional golf courses, then that information should be enough to show that the mitigation measures are feasible. As we discuss in detail in our comments below, all proposed mitigation measures are unremarkable and completely feasible.

9. The City cannot reject mitigation measures that eliminate "take" of endangered species as defined in the Endangered Species Act ("ESA"). The applicant did not receive permission to take endangered species. If the City does not require mitigation, the City will be granting a permit for an action known to the City to cause take of endangered species. The City itself would violate the ESA if it grants a permit to a third party to commit an action that causes take of endangered species. Loggerhead Turtle v. County Council of Volusia County, Florida, 148 F.3d 1231 (11th Cir. 1998). The way the City can avoid an ESA violation is by requiring, at a minimum, the mitigation described in the RDEIR.

10. The project description means that professional play in PGA tournaments is not an anticipated use of the course, and proposals for such use would require supplemental environmental documentation.

Specific Comments.

1. Visual Impacts.

The DEIR, at page 22, concludes that there will be no significant visual impacts from the proposed project, while acknowledging that, "Views of the hillside from the neighbors near the project site will be obscured when the numerous trees planted along the perimeter of the project site become established."

The EIR should reconsider the significance of visual impacts on the site. The dense tree planting along the perimeter of the land create a significant, adverse visual impacts for the

neighbors and the public as it drives along Foothill or other adjacent roads. In addition, the trees—planted in ugly, artificial-looking rows—fundamentally change the visual character of the area, which is dominated by longer views of the foothills, farmlands, and rural residences. This problem is exacerbated by the type of trees selected. Redwoods and other conifers would not grow in this area naturally, and thus look out of place. This problem will only get worse as the trees grow.

We are submitting photos of the area. From photo number one—taken just to the west of the project site, you can see the view of the foothills from Foothill Road. The following pictures are also from Foothill, but are taken adjacent to the project site. This depicts the hedgerows of trees and the views the neighbors currently have. You can see that the longer views are nearly gone at this point, and will dissappear entirely as the trees grow.

A recent count shows that nineteen homes are located directly across Foothill from the project site. Additionally, homes to either side of the project will have their views towards the valley floor obscured as the trees grow.

Additionally, the trees are typically planted too close together for their own well being. Please provide an arborist's opinion as to the long-term health of the trees under the current conditions. If, as we suspect, many trees will suffer or die, will this exacerbate the negative visual impacts.

The mitigation for this impact would be to remove many of the trees, organize those that remain in a more natural looking groups, and remove portions of the berm that many of the trees have been planted on. Ideally, oaks and other trees and shrubs more suitable to the area would be planted instead.

2. Wildlife Mitigation Measure Package I (pages 50-53)

Implement USFWS Mitigation Measure Recommendations. The Fish and Wildlife Service ("FWS") recommendations are part of the "Package I" mitigations described on RDEIR page 50 to reduce wildlife impacts. The requirements to purchase 51 acres of offsite-habitat does nothing to alter the golf course and is feasible. FWS identified in its letter an even-smaller 35-acre parcel that could be bought by the applicant, so the mitigation is especially feasible. We additionally note that the applicant's likely violation of the Endangered Species Act through its illegal destruction of habitat in 1997 cannot now be excused on the basis that it would be expensive to mitigate the damage it caused. The cost of purchasing the habitat does not make it infeasible.

FWS proposes that in lieu of purchasing 51 acres on replacement habitat, the applicant may purchase and protect 35 acres of prime habitat currently being considered for purchase by the VTA. RDEIR, App. C-6 at 2. If VTA plans to purchase and protect this prime habitat on its own, and if VTA will not protect additional habitat as a "substitute" for the 35 acres, then this proposed mitigation is legally inadequate. Protecting land through the applicant's purchase that would have been protected anyway might save the VTA some money, but it does not mitigate environmental harm. The City must show how this 35 acre purchase would increase the amount of protected land if the 35-acre option if this mitigation is to be legally adequate.

Riparian Buffer. The riparian buffer in Package I mitigations is feasible. As described above in the General Comments, the massive size of this golf course means that altering the course layout as needed for the buffer will not interfere with the ability of golfers, especially amateur golfers, to use and enjoy the course.

Managing Non-Native Predator Species. Monitoring ponds for predators of endangered species and drying out those ponds containing predators for 2-3 week periods is an easily-accomplished measure. The alternative is to create a "population sink" where the golf course design becomes a trap for killing red-legged frogs and tiger salamanders.

Pond buffers. The proposed 10-foot buffers around the ponds will not interfere with golf course play.

Maintaining Water Quality of Breeding Ponds/Establish Vegetated Shelves. As with other measures, this mitigation is unexceptional and does not interfere with golf course play.

Water Quality Setback from Corralitos Creek. The proposed 50-foot buffer adds little if any extra burden to the 70-foot average buffer required by FWS. Again, the golf course has plenty of room with the buffer.

3. Wildlife Mitigation Measure Package II (pages 51-53)

Providing a Buffer Zone. A two hundred-foot buffer zone around water bodies leaves more-than adequate amount of space on the property for an 18-hole golf course. As attested by Golf Course Superintendent Kenneth Harp, the course could easily fit on a much smaller parcel, so the buffers will not interfere with the feasibility of the course.

Managing Non-Native Predators, Water Quality, Vegetated Shelves, Creek Setback. Same as the comments above discussing these components of Mitigation Package I.

Additional Tiger Salamander Mitigation. Comments are hardly needed. Placing some rocks and branches for habitat could not be easier.

4. Riparian Habitat (page 53)

Setback size. Comments made above regarding the feasibility of buffer zones apply here as well.

Other aspects of riparian protection. All the proposed riparian mitigation measures are commonly done and present no feasibility problems.

5. Water Supply Impacts

As pointed out by Golf Course Superintendent Harp in the attached letter, entire 18-hole

courses have been built on 125-acre parcels. The applicant currently has 128 acres in irrigated turf, larger than the entire parcel used by other courses. RDEIR at 84. Reducing irrigated turf to 55-60 acres is still up to 20% more turf than that used at other courses in the region. Id. Fifty acres has been shown to be feasible, so 55-60 acres is more than feasible mitigation for significant water supply impacts, which will also reduce pesticide impacts and potential groundwater pollution.

6. Traffic Impacts

The discussion of traffic impacts fails to analyze whether the 1997 golf course construction of this project had significant traffic impacts, in terms of volume or wear on roads from heavy equipment. Given the massive size of the construction project, the evidence shows those impacts were significant. The project applicant should be required to mitigate any construction-related traffic impacts through payments into a fund used to repair roads and to pay for traffic volume impacts, if any, through payments supporting public transportation. The fact that this and other construction-related impacts have already occurred is irrelevant, because the construction is part of the project, and mitigation expressly includes rectifying impacts after they have occurred, and eliminating impacts over time. 14 Cal. Code Regs. § 15370(c)-(d).

7. Noise Impacts

As with traffic impacts, the RDEIR should have analyzed construction-related noise impacts. Again, the massive size of the project shows noise impacts were significant. The applicant should pay into a fund for noise abatement. If none exists, the applicant should pay an appropriate amount for retiring and replacing older, noisier vehicles used by the City.

The unincorporated noise mitigation measures on page 91 would additionally reduce the total noise impacts experienced by neighbors, and should be required for this project.

8. Air Impacts

As with traffic and noise, air impacts from the 1997 construction should have been analyzed, and were likely to have been significant, especially from dust. The applicant should pay into an air pollution abatement program to mitigate its impacts.

9. Secondary Impacts

Red-legged Frog. Regarding Mitigation 1, there is plenty of space on the parcel for habitat for all the reasons discussed in the General Comments, above. Mitigations 2-4 are similar to the Wildlife Package Mitigations discussed previously, and those comments apply here. Mitigation 5 – compliance with agencies - is an absolute necessity, so feasibility is irrelevant.

Tiger Salamander. Mitigations 1-3 have been discussed in relation to red-legged frogs and Wildlife Packages, and those comments apply here. Mitigation 4 is another example of off-site mitigation. Off-site mitigation is commonly done and is as feasible for the project applicant as it is for anyone else.

10. Math Institute

Since construction of the Math Institute is a stated project objective, why are there no drawing of the proposed new building? Please provide a visual depiction of the institute, so that the public can detemine whether the building design and massing are appropriate for the site, or whether they might lead to increased visual impacts.

11. Cumulative Impacts

Water Usage. Please support the statement on page 116 that "agricultural land uses require more water than urban land uses." Much of the surrounding land uses will be residential, with lawns and other activities typical of residencies. They might use as much or more water than the orchards and row crops currently near the site. Please provide typical water usages for orchards, row crops, and residential uses of the densities predicted in area.

Also, how many of the surrounding projects will be drawing on the same groundwater?

Please provide any information on trends in the level of the groundwater table in the area.

There is an inadequate analysis of the effect of having two golf courses (the Institute and Harvey Bear) nearly adjacent to each other. Please provide specific information for the combined water needs of the two courses and whether the groundwater in the area can accommodate that without negatively impacting the local residencies which rely on groundwater (e.g. cause them to make their wells deeper).

To mitigate for potential draw-down of groundwater in the area due to the proposed project, a mitigation measure should be included that groundwater levels will be monitored and, if groundwater levels fall below a threshold (to be established), the course would reduce water usage to a level which reduces the impacts to less than significant.

Farmlands. To deal with a significant, cumulative loss of agricultural land, the City of Gilroy is implementing a programs whereby those that contribute to the loss of farmland in the future will mitigate that loss by purchasing either fee title or a conservation easement over other farmland in Santa Clara County, and then keeping that land in farming.

We suggest that Morgan Hill consider a similar program of farmland preservation, to reduce the cumulatively significant loss of farmlands from this and other projects. The proposed project could mitigate for its contribution to the cumulative loss of farmland by preserving 57 acres (the amount of prime farmland lost on site) in the region. Please address the feasibility of both aspects of this proposal (i.e. a wider program and the specific amount for this site).

Serpentine and Sensitive Species. Similarly, the project's contribution to a cumulatively significant loss of serpentine habitat and habitats for special status animals (DEIR, page 117-118) could be mitigated by requiring off-site acquisition and preservation of these habitats (as mentioned in the DEIR at page 111). This mitigation appears feasible, in that the project proponent has already agreed with the U.S. Fish and Wildlife Service (FWS) to mitigate for impacts to Red-legged frog by acquiring and preserving off-site habitat. Please describe the

current status and content of the agreement with the FWS (acreage, etc), so the public can better understand the nature of off-site mitigation.

12. Mitigation Monitoring and Enforcement

The following comments relate to mitigation monitoring and enforcement. Based on past history, we question the City's ability to adequately monitor or enforce mitigation measures on the site. To an even greater extent, we question the project proponents' commitment to any mitigation measures which are imposed. The public should be confident that those mitigation measures contained in the DEIR will actually be implemented in a manner which does indeed reduce impacts to a less than significant level. Therefore, we feel these are legitimate CEQA comments, and we request a response.

Please describe how the mitigation monitoring plan for this project will be compiled.

Please describe the resources the City has to enforce those mitigation measures. In other words, what is the system in place in Morgan Hill for mitigation monitoring, who is responsible for oversight of a project such as this, and is there adequate staffing to ensure that mitigation measures will be inspected?

If a mitigation measure is not implemented, or not implemented adequately, what are the enforcement mechanisms in place in Morgan Hill? Can the proposed project be shut down, or the propect proponents fined?

Is there any heightened scrutiny when dealing with a project proponent who has shown a clear disregard for local, state, and federal law, such as the proponents of this project?

If the City is to claim that it has an adequate system in place and adequate staffing to deal with monitoring and enforcement, please explain why these mechanisms were not used in dealing with the project proponent since the late 1990's, when the City first noted that the old grading permit had been violated.

The above information, including a discussion of the City's past failure to monitor or enforce against the proposed project, is relevant to CEQA, in that it will help the public better understand the context of mitigation monitoring and enforcement, and thus have confidence that in the future the project proponents will be held to their permit conditions, giving meaning to the CEQA documents.

Please discuss which proposed mitigation measures lend themselves to performance criteria (e.g. riparian habitat restoration areas shall be monitored yearly for five years and must achieve a success rate of 70%, or replanting shall be required). For those that would benefit from performance criteria, please provide the suggested criteria for public comment).

When the mitigation monitoring plan for the proposed project is drafted, we recommend that it be detailed, clear as to whom responsibility for implementation and oversight of each measure has been assigned, and containing a schedule for inspection and documentation.

Conclusion

We appreciate the opportunity to comment on the RDEIR, and request responses to the above comments. Please contact us if you have any questions.

Sincerely,

Brian A. Schmidt
Legislative Advocate
Committee for Green Foothills

Craig Breon
Executive Director
Santa Clara Valley Audubon Society

Sheila Flodberg
12925 Foothill Ave.
San Martin, Ca. 95046
Jan.30, 2004

Jim Rowe, Planning Supervisor
City Of Morgan Hill
17555 Peak Ave.
Morgan Hill, Ca. 95037

Dear Mr. Rowe:

It has always been my impression that before building, expanding or modifying a property, a permit had to be obtained. Yet Fry Electronics owner proceeded to do work on the existing Flying Lady golf course without a permit or an EIR. Isn't this against the law? Because of this action there are numerous unmitigated impacts that affect nearby properties, wildlife, riparian habitat, surface and ground waters, many plant species, and excessive use of water to name a fewof the many problems.

More specifically red-legged fr ogs and California tiger salmanders, both listed as endangered species have been and will continue to be lost. Burrowing owls, other raptors and swallows have their nesting areas infringed upon. The storm drain that was removed to enlarge the golf course has resulted in flooding of nearby properties and streets in the area.Ordinance sized might have been removed but they were replaced with numerous mature trees. This plus grading, maintenance, and watering (437,500 gallons per day) has led to high and unsafe leves of natrogen in wells, soil erosion and depleating ground water resources, the latter a danger in case of fire. Site inspection showed that the gold course lakes do not confirm to the plan given to the project proponent by the city of Morgan Hill. I could go on and on about the negative impacts the gold course project has.

If the objective is for the site project to be developed with the goals and policies of Morgan Hill, I think the project has failed miserably. Not only is Morgan Hill affected but wildlife, water, soil,plants, etc. and San Martin which borders the named project area. In addition I wonder of the mathematicians being flown in for the mathematics institute and the "charity" golf tournaments have anything to do with proposed airport expansion. Money does speak loudly. I would hope that the city of Morgan Hill has enough concern and caring for the environment and residents that it stops the project where it is and not be swayed by the Fry millions.

Thank you for your attention to my concerns.

Sincerely yours,

Sheila O. Flodberg

Sheila O. Flodberg

February 3, 2004

The City of Morgan Hill
Attention: Jim Rowe
Revised Environmental Impact Report for "The Institute Golf Course"

To Whom It May Concern:

Regarding the Revised Environmental Impact Report for the Institute Golf Course. We urge The City of Morgan Hill to take adequate steps to protect the Homeowners, Community and the environment.

We live across the street from the "Golf Course" and the following are just a few of our concerns.

1) The depletion of water supply to Homeowners wells
2) The amount of Nitrogen and pesticides in our water supply filtering down from the golf course to our wells
3) The possible flooding and mudslides in the neighborhood. We are currently not zoned as a "Flood Zone" area and we are concerned that we may be upgrade to a "flood zone" as a result of the golf course. Which will increase Homeowners insurance costs.
4) The 8 to 12 foot dirt ridge along Foothill created by the golf course and the trees planted on that ridge which removes all of our View of the Hills
5) The damage to the road from the golf course's construction
6) The traffic to the golf course
7) The water overflow which dumps into a roadside drainage ditch
8) The proposed charity golf tournaments would **Highly** impact us with traffic and people
9) The endangered species
10) The Fact that the Golf Course is in Morgan Hill and we live in San Martin. Is the City of Morgan Hill looking out for the interests of the Homeowners in San Martin?
11) If the Golf Course impacts the San Martin Homeowners just "Who" will be accountable?
12) That the City of Morgan Hill require the "Golf Course" to mitigate our concerns.

Sincerely,

Annette Zuck and Eric Sjoberg

Annette Zuck, and Eric Sjoberg
14705 Foothill Ave
San Martin, California95046

2485 Church Ave
San Martin, CA 95046
February 2, 2004

James Rowe
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mr. Rowe:

I am responding to the **Draft Environmental Impact Report** on **The Institute Golf Course** prepared for the City of Morgan Hill.

Although Fry's Golf Course is technically situated in Morgan Hill, San Martin, my neighborhood, surrounds it on all sides. So, I have keen interest in the development in this area.

My first reaction after reading the report is that Mr. Fry egregiously ignored the permit process and created an 18-hole golf course where a 9-hole course had existed. Such disrespect for your city's process and the neighbors' concerns is inexcusable, even for a large property tax contributor like Mr. Fry. My main concern about the expanded course is the ground water pollution from the fertilizer and other chemicals used to maintain the fairways. The runoff also flows into Corralitos Creek, San Martin Creek, and Llagas Creek. I am not opposed to AIM and plans for its building, as long as the structure remains within the bounds of the existing Flying Lady restaurant building.

My recommendations are:

a. The course is to be scaled back to the original 9 holes, and that the environment restored as much as possible to the state prior to the construction of the 18-holes.
b. As the AIM building is not constructed yet, to allow construction of the building contingent on all permits and environmental mitigations in the report being met.
c. All modifications to existing structures should be permitted only after detailed structural and use plans are submitted. I am especially concerned about the so-called ancillary structures, to which no detailed plans have been submitted.

Sincerely,

Kenneth Brown

Peter Keesling, DVM
13645 Foothill Avenue
San Martin, California 95046
3 February 2004

Planning Commission
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California 95037

Members of the Planning Commission;

This letter is in response to the call for public comment to the Draft Environmental Impact Report for the Institute Golf Course. Thank you for you consideration.

As a neighbor living less than 1000 yards from this property, I am concerned not only about the project itself, but more for the proposed plans to mitigate some of the environmental impacts caused by this project. The DEIR lists numerous items that will have a significant impact on the environment. It also details how some of these can be mitigated by the proponent to lessen the impact. The specific mitigation requirements are extensive and necessary. I am particularly concerned about the effects of this project on groundwater contamination and supply.

The proponent has already demonstrated a cavalier attitude towards those regulations that we all must follow. For example, the use permit of April, 1997 allowed for the work on the 40 acres of the then-existing golf course. The proponents instead did improvements over 150 of the 192 acres, doing cut/fill work that amounted to over 4 times the amount allowed. It appears that the now-existing golf course was built without permits or any proper regard for the regulations that everyone in this region must follow. And the effects on neighbors are already measurable...flooding of adjacent properties that were previously not affected by heavy rains, increased nitrate levels in surrounding wells, etc.

The DEIR describes ways in which the proponent can mitigate the impacts of this project on the environment. The work necessary would be extensive. But given the past history of the proponent's methods of work, why should anyone believe that these solutions be completed?

I strongly believe that a No Project Alternative would be the appropriate action for the Institute Golf Course. This is based on the repeated efforts by the proponent to work outside the regulations by which all others must abide. It is clear that the proponent's interest in developing a top-quality golf course overrides any concern for environment or those families living in the same region. And the environmental effects of this project are too far reaching.

The project was built to its extensive level without proper permits or concern for environment. It has already had a negative impact on groundwater and other environmental issues. I have little faith that mitigation of any of the problems already caused by this development would be carried out.

I would be happy to discuss this further with you or any of your staff. Thank you, again, for your consideration.

Very sincerely yours,

Peter T. Keesling, DVM
(daytime phone# 683-4777)

Robert J. Benich
498 Via Sorrento
Morgan Hill, CA 95037

February 3, 2004

Mr. Jim Rowe
Director, Planning Department
City of Morgan Hill

Subject: Revised Draft EIR for "The Institute Golf Course", December 2003

Dear Mr. Rowe:

I have a number of comments regarding the subject draft EIR that I believe should be addressed. Overall, the report is deficient in that it does not take into consideration the use and condition of the land by the previous owner compared to the present situation. Common sense dictates that one must ask, "Who is/was exercising better stewardship of this property – the current or previous owner?"

Specifically, I have the following comments and observations. Please refer to the mustard colored "SUMMARY" beginning on page v of the report.

1. Pg. vi – viii Vegetation and Wildlife Impacts

   a. Bullfrogs vs Red-Legged Frogs: Pg. 50 of the report states, "Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented".

   I ask, "Why"? In addition, the report states that ponds should be drained in the Fall "just in case" there might be bullfrogs present and, therefore, harm the red-legged frogs. **How can this be rated as a "Significant Impact" when no bullfrogs or other non-native predators were found?**

   In addition, page 36 of the report states, "... red-legged frogs were observed in the natural creek and ... at the man-made pond .. of the project site. In September 2003, red-legged ... adults (50 total) were observed in all ponds ... on the site." I ask again, **"Then why drain the ponds in the Fall?"**

   b. Tiger salamanders: Pg. 36 of the report says that, "A ... tiger salamander was observed ...". I interpret this to mean that one single salamander was seen. Does this justify such drastic mitigation measures? It seems to me that this is **INSIGNIFICANT.**

c. Burrowing Owls: Pg. 37 of the report states, "Although ... ground squirrels and their burrows were observed ... in 2000, no Burrowing Owls were observed... Because habitat for Burrowing Owls was observed during the 2000 survey, they could occur on-site."

No Burrowing Owls in over three years? Then how can this be a "Significant Impact" (pg. 44 of the report)?

d. Raptors, swallows & bats: Pg. 45 of the report states that construction activities and demolition of existing buildings could disturb these animals.

I ask: "What did these animals do before there were even any buildings on this site? What did they do when these buildings were being constructed in the first place? And finally, were the buildings constructed for the benefit of birds or the benefit of people?

These should be "INSIGNIFICANT IMPACTS".

2. Pg. xiv - Ordinance-Size Trees

Pg. 112 of the report states, "The numerous trees planted on the golf course are primarily non-native and do not offer replacement habitat values".

I respectfully disagree with this assessment. Just look at the all the beautiful "non-native" trees planted throughout the State of California and prescribed by city codes. Eucalyptus varieties from Australia, numerous kinds of Palm trees, Japanese Maples, and Chinese Elms are only a sampling of wonderful trees that provide visual beauty, shade, and habitat for birds and animals. To plant only native species of trees would be boring.

This should be rated an "INSIGNIFICANT IMPACT".

Overall, the report assessment of the current land use is too severe – especially when compared to the way the property was being managed (or mismanaged) by the previous owner. There are many suggested impacts and mitigations that are warranted but, overall, the many items listed in the "SUMMARY" are simply "overkill" and are not justified.

Finally, the report needs to include the results of research, tests and mitigations that have already been done by the current owners and which are not reflected in this draft EIR.

Sincerely,

Robert J. Benich

To: Mr. James Rowe
City of Morgan Hill
Morgan Hill, CA

February 3, 2004

Re: File#: UP-99-03 & ZA-03-03
Schedule# 2000062092
The Institute Golf Course EIR

Dear Sir,

Please include the following letter and information into the public review of the Revised Draft of the Environmental Impact Report for the Institute Golf Course.

It is my professional opinion as a "Certified" Golf Course Superintendent with the Golf Course Superintendents Association of America that all of the mitigation referred to in this report be adopted by the project and become mandatory before issuance of any related permits. Many of the mitigations referred to in this draft do not go far enough in defining or protecting the environment or reducing the impact caused by the project and golf course.

The existing Environmental Impact Report is not specifically tailored for a golf course construction project. Most EIR's are for projects other than golf courses. The existing EIR fails to take into account that a golf course project once finished, becomes a living entity within the environment in which it resides. That a golf course unlike the majority of EIR's which mainly deal with the building of buildings for businesses and parking lots, streets, so on and so forth will continually pose an environmental threat to itself and other environments in close proximity to it unless ongoing environmental programs and policies are continually reviewed and upgraded.

The following information should have been included in the Environmental Impact Report.

1. INTEGRATED TURFGRASS AND PESTICIDE MANAGEMENT PROGRAMS

The EIR for the Institute Golf Course does not contain either a report for a proposed Integrated Turfgrass Management Program or a proposed Pesticide Management Program. Both of these programs are highly consistent with any professionally managed golf course maintenance operation. Their inclusion into the EIR would then take into account all of the relevant proposed Mitigation Measures and those deemed a requirement and in turn show how these

Mitigation measures would be complied with and accomplished on a daily, weekly, monthly and annual basis.

The Integrated Turfgrass and Pesticide Management programs will also show what chemical types and amounts the golf course might expect to use on a daily, weekly, monthly and annual basis. An extremely important consideration for environmental impacts associated with Vegetation, Wildlife, Hydrology and Water Quality portions of this EIR.

INTEGRATED TURFGRASS MANAGEMENT PROGRAM OVERVIEW

An Integrated Turfgrass Management Program is primarily written by a qualified Golf Course Superintendent. The qualifications in keeping with the Class "A" and "Certified" standards of the Golf Course Superintendents Association of America.

An Integrated Turfgrass Management Program identifies the specific turf types present on the golf course as well as native turf types. The program will also identify all plant types within the golf courses boundaries and wildlife present. The program will outline the specific types of soils and predominant species of turfs to be grown on the soils present. The program will address fertility requirements of the differing turf species in relation to their uses on the golf course and in turn show what types of fertilizers will be used, how much will be used on an annual basis. This will in turn answer many questions in relation to run off of fertilizer components into surrounding water bodies and the potential for ground water contamination.

The Integrated Turfgrass Management Program will be able to determine the water use rate based on historical data for the selected species of turf being grown on the golf course. Historically speaking, an 18 hole golf course will use approximately 500,000 gallons of water per day in order to water the entire golf course. This fact was not apparent in the EIR and is important in determining factors relevant to the EIR Water Supply.

With increasing emphasis on clean water, the use of Grey Water as the primary irrigation source for the golf course was not included as a mitigation for water supply problems which will occur in the future because of increased construction around the golf course boundaries which historically occurs after a golf course is built. The mention of the Automatic Irrigation System did not include a map of the existing or proposed irrigations system and where the irrigation heads

(sprinklers) will be positioned and in turn where the water will be applied. If the water being applied will stay within the golf courses boundaries. If the water will be introduced into habitat area's designated for endangered species, endangered plants, etc. It would show if the existing lakes designated for irrigation purposes will be sufficient in size and depth to supply a days water use by the course and the requirements or water amounts needed to maintain an adequate enough supply in the lakes from other sources. Rain, well, stream, etc.

The Integrated Turfgrass Management Program will outline the training programs that will be used to teach and continually educate the golf courses employees in all aspects of golf course maintenance operations. To include but not limited to safety, first aid, safely operating golf course equipment, golf course rules and courtesies extended to golfers during equipment operations and most importantly environmental awareness. For in order to make sure that mitigation of any environmental impact is to be successful requires that those closet to the golf course on a daily basis, the golf course maintenance employee, must become knowledgeable in regards to the environment and how to protect the environment at the golf course.

The Institute Golf Course would become a member of the Audubon Sanctuary Program after complying with the requirements for membership. This should become a part of the mitigation for Wildlife in this EIR.

The Turfgrass Management Program if it had been included into the Institute of Golf Courses EIR, would ensure that those steps in regards to mitigation would not be forgotten by a new golf course superintendent which may not have the qualifications to effectively manage the golf course to professional standards. The inclusion of this program into the EIR by the developer/city, would show that a genuine attempt is being made to ensure that all mitigation needed or suggested by the EIR would be undertaken and not lost in the coming months or years. Which historically can happen if management changes, which will eventually happen.

PESTICIDE MANAGEMENT PROGRAM OVERVIEW

The Pesticide Management Program is primarily written by a qualified golf course superintendent. The qualifications are in keeping with a class "A" or "Certified" golf course superintendent with the Golf Course Superintendents Association of America.

The Pesticide Management Program primarily addresses the use of any and all pesticides, to include but not limited to, herbicides, insecticides and fungicides.

It will describe the types of pests, weeds and diseases present or expected to occur in relation to the turf species grown. The program will outline the specific types of application equipment to be used for the application of pesticides, the potential for drift of the pesticides from the targeted area's or runoff potential. The amounts and types of pesticides to be used will dictate the size of the Hazardous Materials building size, the size of the Wash Pad and attached water recycling unit.

An Integrated Pesticide Management Program will include a map of the golf course property. This map will in turn be divided into spray areas. Where set backs exist for spraying. Where spraying of certain pesticides is not allowed based upon their type but may be used on other portions of the golf course.

The Pesticide Program will detail the spray equipments operation and most importantly it's cleaning and disposal or waste water derived from the cleaning operations.

The Pesticide Program will set thresholds and limits of insect or plant pests present in order to qualify spraying for those insect or plant pests.

The Pesticide Program will outline the training and licensing of the golf course employees responsible for the application of Pesticides. It will also outline the "On Going" training of these employees.

Very simply, the existence of the Turf Management and Pesticide Management Programs is to explain in layman terms what is required to effectively run a professional golf course operation. It is the understanding of the inter-relationships that exist between the programs which is most important. The EIR for this project does put forth many worthwhile idea's and concerns but fails to take into account that many aspects of golf course maintenance are determined in large part by what happens in the environment on a daily basis, which in turn can completely change the direction a golf course takes for that week and even month. Golf courses are not an immediate reflection of the professional care they have been given. Golf courses are a reflection of what has been accomplished up to 6 months and a year prior to any given day in question. The EIR falls short in that it does not recommend that only a highly qualified individual with experience in professional turfgrass management be employed as the Superintendent of the golf course maintenance operations. The EIR does however mention that on a "licensed" person be responsible for spraying pesticides. The City of Morgan Hill and all others should avoid at all costs putting itself in the position of overseer of the golf course maintenance operations which would include the approval or disapproval of fertilizers or

pesticides. Case in point, the cheapest fertilizers are normally the quick release or highly soluble forms of fertilizer in up front costs. But when compared to slow release forms of fertilizers which have a higher cost initially the cheaper forms or quick release actually end up costing more per square foot.

MITIGATION MEASURES DIRECT IMPACT

In my professional opinion, all mitigation measures should be incorporated to the fullest extent possible. The project proposes an extremely large golf course of 18 holes over nearly 200 acres. Eighteen hole-courses can fit in 125-acre parcels (with significantly less turf), and comfortably fit into 150-acre parcels. There is plenty of room on this 200-acre parcel for the various buffer zones proposed without compromising the ability to play golf. The problem with less than 125 acres is that holes can be too close together, raising safety issues of golfers getting hit. The buffer zones do not create that problem here because the holes can remain spread-out.

The large amount of turf, and the long and wide fairways can be reduced without eliminating the recreational value of the course, especially for the amateur golfers that the course is expressly designed to accommodate.

The various natural features proposed in the mitigation such as establishing native plants and vegetated shelves in the ponds are common features on golf courses, so there is no reason why they could not become part of the project. These natural features add to the environmental and aesthetic value of many golf courses.

MITIGATION MEASURES SECONDARY IMPACT

In my professional opinion, all mitigation measures should be incorporated to the fullest extent possible. Secondary impacts can over time be more important than the initial direct impacts. It is therefore prudent from a time standpoint to ensure that any mitigation measures proposed be carefully followed and documented.

CUMULATIVE IMPACTS AND MITIGATION

Cumulative water supply impacts is in total error. The demands of the golf course for water is based upon rainfall or more accurately, the lack of rainfall. Irrigation as mentioned before, can see the golf course use up to and even more than 500,000 gallons per day depending on irrigation system design, gallons per minute of each individual sprinkler head and the sprinkler heads collectively.

The golf course water requirements in order to grow acceptable turf of sufficient quality to play the game of golf upon can change daily and weekly. Two weeks without water would see the entire golf course in a state of drought with supplemental watering be required on a daily basis. Greens can not go for more than 48 hours at the extreme without water, depending on their construction method. USGA greens require daily watering during the growing season in order to maintain a perched water table within the green. If anything, it should be seen that the cumulative demands of the golf course on the existing water supply will not lessen but only increase over time, but then again, that is totally dependent on the lack of rain.

Cumulative loss of Agricultural Land has already been mentioned in that those area's immediately adjacent to the golf course property will see and increase in homes and possibly businesses. I would venture to guess that plans are already underway for those areas. It is my professional opinion that the loss of agricultural lands should be stopped in total. The loss of these lands only guarantees our dependence on farmers from other countries.

Cumulative Special-Status Plant Species Habitat Impact. Owing to the fact that this project has already devastated a half acre of habitat for plants and animals it is only fit and proper that the project purchase the mentioned land in the EIR and keep it for perpetual use as a protected habitat. A small price to pay for destroying what could have and should have cost in the millions for violating it's permits.

Cumulative Surface Water Quality Impacts. In defense of a properly and professionally maintained golf course, the surface water quality will not increase but to the contrary, should decrease. If the maintenance equipment is kept on a Preventative Maintenance Program and the Wash Pad's recycling system is kept operational and completely functional, the golf course will not impact surface water quality. The only way that the surface water quality would be impacted would be from improperly applied fertilizers or pesticides. It has been shown scientifically that properly maintained turf grass will actually reduce surface runoff.

Cumulative Ground Water Quality Impacts. The water reaching the underground water table through normal soil infiltration on a golf course will significantly increase the water quality. Farmed land requires the tilling of the land or disturbing the uppermost soil profiles which allows for a faster introduction of pollutants into the lower soil profiles. Studies have shown that golf courses by their nature, contribute greatly to ground water quality increase because the chemicals introduced on the surface of well maintained turf will be tied up in normal soil chemistry and therefore not allowed to migrate

downwards into the lower soil profiles. It is only when the upper soil profiles are continually disturbed does the potential for ground water contamination exist. The only other source for the degradation of the ground water quality is if the existing ponds or lakes on a golf course are at the same level as the ground water table. In the event that this is true, all ponds or lakes should be lined with commercially available plastic sheeting specifically designed for pond lining. This will in turn protect the ground water table from pollution due to chemical spills or excessive runoff of improperly applied fertilizers or pesticides.

Cumulative Increase in Surface Water Runoff Impacts. Properly grown turfgrass will aid in the slow down of surface runoff from the majority of the golf course. It is to be expected that asphalt areas to include cart paths will contribute to surface water runoffs increasing. The use of turf swales on the project should be the first consideration when it comes to golf course drainage. Swales of turf will definitely assist in the slowdown of water off the course property and act as a filter for the water in the process. Silt and clay will be more prone to settle out and be trapped by actively growing turf.

MITIGATION FOR CUMULATIVE IMPACTS

Mitigation for Cumulative Loss of Agricultural Land. In contrast to the conclusion, the mitigation which should be required is to purchase the property immediately adjacent to the golf course property on it's East, North East Boundary and have a 100' to 200' setback from the boundary line which would be left in as natural a state as possible without fear of any future development. This would mean buying a one hundred to two hundred foot border down the entire length of the project boundary and designating it as natural habitat. This would be apart from purchasing other land for other mitigation measures.

Mitigation for Cumulative Loss of Special-Status Plant Species (Serpentine) Habitat.
The Project should be required to mitigate measures described in Section III., Secondary Impacts. This should be required by the City of Morgan Hill as a condition of project approval.

Mitigation for Cumulative Loss of Special-Status Animal Species.
The City of Morgan Hill should make as a condition of approval the best one of the two mitigation measure packages described in Section II., C,. Vegetation and Wildlife. The project and subsequent golf course operations should be required to Conformance of the City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan and should include the application to the Audubon's Golf

Course Sanctuary Program, with future admission into the program also a condition of the projects approval.

Mitigation for Cumulative Surface Water Quality Impacts. The City of Morgan Hill should require as a condition of project approval the mitigation measures identified in Section II., D., Hydrology and Water Quality. As an additional mitigation measure the City should require the writing of an Integrated Turfgrass Management Program for the golf course maintenance operations by a qualified member or former member of the Golf Course Superintendents Association of America whose status was/is either Class "A" or "Certified". The City of Morgan Hill should also require as a condition of approval an Overlay Irrigation Map constructed to show the projected irrigation head placement and existing irrigation head placement, with additional overlays showing each irrigation head's respective throw diameter. The City of Morgan Hill should make as a condition of project approval, the lining of all ponds or lakes within the project boundaries. (Protection of Ground Water Tables)

Mitigation for Cumulative Increase in Surface Water Runoff Impacts.
The City of Morgan Hill should make as a condition of project approval the mitigation measures identified in Section II., D., Hydrology and Water Quality. As an additional mitigation measure the City of Morgan Hill should require the writing of an Integrated Pesticide Management Program for the golf course maintenance operations by a qualified member or former member of the Golf Course Superintendents Association of America whose status was/is either Class "A" or "Certified".

The most feasible solution outside of a no-project is to adopt the Reduced Impact On-Site Alternative with the additional mitigation measures introduced in this letter.

Respectfully,

Kenneth M Harp, CGCS
Certified Golf Course Superintendent

RESUME

OF

KENNETH M HARP, CGCS

9439 Rackley Mountain Road
Chester, Arkansas 72934

E-mail: kmharp48@hotmail.com
Home Phone: 479-369-2628
Cell Phone: 479-883-5150

Kenneth M. Harp

"Qualifications and Accomplishments"

Bachelor of Science in General Science & Associate of Science in ***Turf Management.***

"Certified" Golf Course Superintendent with the Golf Course Superintendents Association of America.

Experienced in ***"Total Quality Management"*** practices and procedures. Graduate of Total Quality Management program. (Military)

Graduate ***"Mid Level Management Program"*** conducted by University of Arkansas School of Business.

Graduate of ***Texas A&M Golf Course Superintendents Course*** (Military)

Currently designing a program ***Standards of Agronomic Practices***, which will enable an objective evaluation of maintenance operations as opposed to subjective evaluations.

Introduced ***"Hydro-Sprigging"*** to the island of Guam and the Pacific Rim.

Selected by the ***International Executive Service Corps***, to provide consulting services to third world developing countries.

Letter of Commendation from Louisiana State Police for ***Bravery.***

Over 20 years of ***"Hands On"*** experience in all phases of golf course maintenance, construction and renovation.

Former ***Executive Staff Member*** with International Special Olympics, 1983.

PROFESSIONAL EXPERIENCE

Awase Meadows Golf Course, Okinawa, Japan
1997 to 2000
Golf Course Superintendent/Construction Consultant
18-Hole Military Golf Course, 55,000 plus rounds per year. Upgrade of existing maintenance operations to improve care of ***Zoysia grass greens,*** tees and fairways. Provide consulting to sports fields and support to Athletic Dept. Budget preparation, writing of equipment specifications, purchasing of equipment/supplies. *Updating of computer system and programs for turf management.* $350,000.00 operating budget. 110 acres. Staff of 19 (Half Japanese, Half American)

Camp Zama Golf Club, Camp Zama, Japan
1996 to 1997
Greens Designer/Builder
18-Hole Military Course, 50,000 plus rounds per year, Driving Range, practice greens, clubhouse grounds, instituted total renovation of all golf greens and maintenance procedures. Designed USGA Mod. greens to replace existing greens. Budget preparation, equipment purchasing, logistics from US to Japan. $500,000.00 per year construction budget. $450,000.00 maintenance budget. 120 acres. Operated Bull Dozer, BobCat Skid Steer Loader, Trak Hoe. *Rain Cad and CAD based design program.*
Staff of 22. (21 Japanese and 1 American)

Dongguan Golf Club Co., Ltd., Dongguan, China (Global Golf, Jim Engh Design)
1994 – 1995
Golf Course Construction Superintendent
27-hole course, driving range, practice greens. Private course with home lot and condominium development. Membership limited to 1500. $5,000,000.00 operating budget. 300 plus acres. Staff of 10

Glenwood Country Club, Glenwood, Arkansas
1993 Summer/Fall
Irrigation Systems Wiring Specialist / Consultant
18-hole Public course, privately owned. Driving range, practice green. Home lot development. TORO OSMAC Irrigation System. Operated Trencher, Bull Dozer, Backhoe, Irrigation Head Installation.
Staff of 4.

Manelle Bay Golf Course, Island of Lanai, Hawaii (Jack Nicklaus Design)
1993 Spring
Irrigation Installation Superintendent
18-hole resort course, to compliment existing resort facility. TORO Network 8000 Irrigation System. Jack Nicklaus design course. $500,000.00 plus operating budget. Operated Vermeer 640 Track Trencher.
Staff of 5.
Cascada, Hotsuhoa, Tolafufu Golf Courses, Maeda Corporation, Guam, U.S.A.
1990 - 1992
Construction Superintendent / Consultant
Three golf course construction projects, two 18 hole golf courses and one 9 hole extension. Over $50 M. in combined construction cost. Responsible for planting operations, liaison between different projects, Inspection of sub-contractors, troubleshooter for Maeda Corporation. Course lay-out, as-builds, quantity take-offs from Architect Drawings/Blueprints, supervision of grading operations, inspection of irrigation system installation procedures/techniques to conform to specifications, inspection of greens and tee construction to ensure meeting of specifications. Learned to Operate D-3 and D-5 Bull Dozer. Tifdwarf and 419 Bermuda predominant turf Hrydro-Sprigged.

Staff of 5.

Treehouse Village Condominiums/ Resort, Hot Springs, AR.
1988 - 1990
Superintendent of Grounds /Golf Course Consultant
Resort condominium complex located on land bridge which extended into local area lake. Private ownership. Boat docks, swimming pool, etc. Landscape design and renovation of plantings. Provided consulting services to local area golf courses, homeowners. $35,000.00 operating budget. 15 Acres.
Staff of 2 Outdoor

Resorts R.V. & Yacht Club, Port Isabel, Texas.
Spring 1986 - Fall 1987
Course Superintendent/Golf Professional
18-hole Executive Golf Course, Pro Shop, putting green, 900 individually owned R.V. lots, Toro Hydraulic Irrigation System, condominiums, tennis courts, Indoor/Outdoor swimming pools, 10,000 square foot exhibition hall, restaurant, 24 hour security force. Introduced first Tandy Computer System for management operations. $1,000,000.00 operating budget. 150 plus acres. Tifdwarf and 419 Bermuda. Staff of 40 (H-2 Mexican)

Riverbend R.V. Resort & Golf Course, Brownsville, Texas.
Spring 1986
Golf Course Superintendent
18-hole Golf Course, putting green, plant and sod nursery, R. V., home lots, clubhouse grounds. Rainbird Automatic irrigation system. Employed to complete additional 9 holes of 18 hole project. 150 acres. 419, 328, Bermuda.
Staff of 20 (H-2 Mexican Employees)

Country Club of Louisiana, Baton Rouge, Louisiana. (Jack Nicklaus Design)
1985
Irrigation Installation Foreman
18-hole golf course construction project, designed by Jack Nicklaus, Rainbird Maxi V, Irrigation system. Began work as crew member and promoted to foreman. Trencher Operator, Backhoe Operator. 419 Bermuda Tees, Fairways. Penncross Creeping Bent Greens
Staff of 6

Westside Golf Club, Brusly, Louisiana
1982 - 1984
Golf Course Superintendent /Golf Professional
18-hole golf course, practice green, manual irrigation system, Pro Shop, bar and lounge. Irrigation system consisted of hose bibs at each green, dragging hoses, small impact sprinklers. 328 and 419 Bermuda. Membership increased due to improved playing conditions.
Staff of 3.

Louisiana State University Athletic Department, Baton Rouge, Louisiana.
1980 - 1982
Assistant Building and Grounds
Responsibilities included care of 18-hole golf course, driving range, putting greens, 5 practice football fields, Tiger Stadium, track stadium, baseball stadium. Responsible for equipment repair, sport venue set-up to include field painting and striping. Sports equipment repair. Writing of specifications for equipment purchase, assisted in budget preparation. 328 and 419 Bermuda. Crew of 20.

Riverside Centroplex Convention Center, Baton Rouge, Louisiana.

1977 -1980

Assistant Director of Building Operations

Convention set up and tear down, employee training, construction, daily building maintenance. Forklift operator, Spot Light Operator. Staff of 25

Punderson Green Machine Lawn Service, Springfield, Massachusetts.
1976-1977

Turf Grass Consultant / Sales Manager

Sales and Marketing, employee training, lawn diagnosis, advertising/promotion. Staff of *5*

Crestview Country Club, Agawam, Massachusetts.
Summer 1975

Student Research Program

18-hole golf course, driving range, practice green, clubhouse grounds, tennis courts. Bentgrass tees, fairways and greens. Geoffrey Cornish Design, Research report received an A +.
Staff of 9.

EDUCATION

BACHELOR OF SCIENCE, Louisiana State University, Baton Rouge, Louisiana. Graduated: August 1981.

ASSOCIATE OF SCIENCE in Turf Grass Management, University Of Massachusetts, Amherst, Massachusetts. Graduated: May 1976.

CERTIFIED FARRIER, Pitt Technical Institute, Greenville, North Carolina, Graduated, November, 1972

CERTIFICATION PROGRAM, Certified 1997, Golf Course Superintendents Association of America, Certification IS STILL CURRENT.

TOTAL QUALITY MANAGEMENT PROGRAM, 40 Hour Program, United States Army Training Division, Camp Zama, Japan. Graduated Spring of 1997.

MID-MANAGEMENT PROFESSIONAL DEVELOPMENT COURSE, 40 Hour Program *University of Arkansas Division of Continuing Education.*
Graduated March, 1998.

MILITARY GOLF COURSE SUPERINTEDENTS COURSE, 80 Hour Program, In-Residence
Program given at *Texas A&M Center for Executive Development*, College Station, Texas
Graduated December 11, 1998.

Military Training: Environmental Compliance, Hazardous Waste Management, Inventory Control, Sexual Harassment, EEO, Ethics, Aids Awareness, Supervisor Safety Training, Cultural Awareness, 7 Habits of Highly Effective People, Time Management.

MEMBERSHIPS

Golf Course Superintendents Association of America Class A Member, "CERTIFIED".
Golf Course Superintendents, Association of Guam, Charter Member and first Vice President.
Arkansas Turf Grass, Association, Past member.
Veterans of Foreign Wars, Post 2278, Hot Springs, AR.

Ancient Free and Accepted Masons, Roswell Lee - Indian Orchard Lodge, Springfield, Massachusetts, 1977. Awarded 20-year service pin.

MILITARY SERVICE

United States Army 1970 - 1972, Specialized Training: Artillery Survey Specialist 82C20 (Forward Observer)
Foreign Service: ***Vietnam 1971-72***, Honorable Discharge
Medals/Badges: Purple Heart (Badge of Merit), Vietnam Service Medal, Vietnam Campaign Medal. Presidential Unit Citation (1st Calvary Division), Cold War Medal, Republic Of Vietnam Gallantry Cross with Palm Unit Citation, Republic of Vietnam Civil Actions Honor Medal, (First Class Unit Citation), Expert Rifleman Badge, Sharpshooter Pistol Badge.

SERVICE WORK

Executive Staff Member, 1983 International Summer Special Olympics, Logistical Support, Baton Rouge, LA.
Staff Member, 1985 National Sports Festival, (U.S. Olympic Games), Logistics, Baton Rouge. LA.
1987 Ronald McDonald House Charity Golf Tournament, Tournament Chairman, Port Isabel, TX.

PERSONAL INFORMATION

Place of Birth: Hot Springs National Park, Arkansas
Marital Status: married,
Interests/Hobbies: Golf, Fishing, Hunting, Photography, Computer Games, Weight Lifting, Chess, Scuba Diving.

References Upon Request

February 4, 2004

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Attn: James Rowe

RE: Draft Environmental Impact Report (DEIR)
The Institute Golf Course

Dear Mr. Rowe,

I am writing in order to summarize various concerns and comments regarding the DEIR and the golf course project in general. We own our property on 14555 Foothill Avenue which is located at the corner of Foothill and Middle, directly across the street from the Golf Course. We have reviewed the DEIR and believe that the report has adequately identified many of the significant impacts to our property and the surrounding community, including the problems of flooding, erosion, water quality, depletion of groundwater and animal habitats. These are serious problems that pose significant threats to the safety and quality of life for all neighboring homeowners and residents.

Of particular concern are the rising levels of nitrates in residential wells neighboring the golf course. Our own well has been independently tested and had current nitrate levels already exceeding acceptable standards for drinking water, so we have been forced to purchase drinking water. Should the golf course be responsible for paying for our drinking water? Certainly, measures should be taken to hold the project responsible for monitoring the situation and make sure it doesn't continue to worsen over time. Similarly, the concern about depletion of the groundwater basin should be monitored and corrected.

The flooding concerns discussed in the DEIR are also of great concern. The golf course has basically replaced "natures drainage system" by diverting most of the water to the drainage ditch along Foothill Avenue. This drainage ditch is unable to adequately handle all of the additional runoff and water which has been diverted here. This has created flooding problems along Foothill Avenue and the impact has been easily been visible during the past rainy season. There are many problems with the existing drainage ditch which must be corrected, and as suggested in the DEIR, that should be a requirement that the golf course drainage and runoff be diverted to other areas rather than the ditch on Foothill which is bearing the bulk of the load.

There are some items in the DEIR that seem to indicate that there are no significant impacts which we would disagree with. With respect to visual impact of the project, the planting of large trees and density of trees planted along Foothill Avenue has already blocked most of the view of the hills for properties on Foothill Avenue. Within just a few more years, those trees will grow to effectively block any view of the hills at all. Homeowners who purchased properties along Foothill should have the right to retain their views of the hills and should not have those views blocked by all of the trees which have been planted in order to achieve this very purpose. We would urge the City of Morgan Hill to clarify the height maximum that these trees can grow to and force the trees to be trimmed when they reach this maximum height in order to preserve the views for these residents and maintain the property values which were enhanced by their proximity to the hills prior to the development of the golf course. There is also not much concern expressed in the DEIR for noise, traffic, and impact to Foothill Avenue by construction and future construction. However, these impacts may be severe. The additional large trucks already traveling on Foothill to the golf course for construction and golf course development have already taken a toll on the roadway, and the construction noise, toxic issues to replace the old buildings, and other construction issues can become a big problem.

The overall concern is that the City of Morgan Hill will allow the Golf Course, the Institute, and Fry's Electronics to continue their attitude of downplaying the impacts to the area, and outright deceiving and misrepresenting the project to the City and the neighboring residents. As discussed in the DEIR, there are many environmental issues including the groundwater basin and nitrate levels that the Golf Course project takes a formal stand that there is no impact even when other evidence demonstrates otherwise. This indifference for the impact on the project's neighbors is of obvious concern. They never stopped construction and development of the golf course even when ordered and instructed to so. They have misrepresented from the beginning the scope and size of the project that they planned to undertake, and so forth. This leads one only to believe that any commitments they make to mitigate these numerous issues may only be "lip service" and there is no intent to truly address these issues. When I read about only 36 rounds of golf per day with an "occasional charity golf event" what I believe is that it would not be surprising to see 250 golfers driving to and participating in a "charity event" on a monthly basis and exceeding all of the estimates for the impact on traffic, the roadway, and so forth.

We urge the City of Morgan Hill and the City Council to stand up for the citizens and residents of our community and not simply accept the hollow promises of the project developers with respect to the issues addressed in the DEIR. These problems must be corrected, and the developers should be held accountable for future impacts of the development. The City Council should keep the interests of residents and homeowners as primary, and not be swayed by the promise of campaign donations or the promise of future tax revenues because of a potential relocation of a larger business to Morgan Hill.

Sincerely,

Rich + Sue Gamboa

Richard & Sue Gamboa
14555 Foothill Avenue
San Martin, CA 95046

Hand delivered
2/4/04

G. Reid Fisher
1670 Chris Lane
San Martin, CA 95046

James Rowe
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

February 4, 2004

SUBJECT: COMMENTS ON FRYS GOLF COURSE DRAFT EIR

Dear Sir or Madam:
I am incensed by the applicant's disregard for the planning process and the law at the State, County and City levels. The net result of this disregard is that eastern side of valley may end up with two golf courses significantly affecting area ground water, among other impacts. The short version of my comments: require every single potential mitigation, and cut no slack.

I am troubled by the Alice-in-Wonderland ability of the Fry's golf course proponents and the Bear Ranch golf course proponents to disregard each other's course in the preparation of their respective EIRs. The EIR for the Bear Ranch golf course does not take into account the effect of the Fry's course, saying it was unpermitted. The Fry's golf course EIR does not take into account the Bear Ranch golf course, since it has not yet been constructed. The net result ultimately could be that two golf courses are constructed, neither one of which adequately considered significant, cumulative effects.

I am most concerned about effects on surface and ground water quality. Nitrate pollution is already a documented health concern for local residents who draw on well water. The EIR identifies this potential effect, but potential mitigation measures in my opinion do not go far enough in reducing the potential for nutrients to reach groundwater.

The site is located in an area of recharge to the groundwater basin supplying nearly the whole South County. If this recharge area can be considered clean and kept clean, it offsets in a small way the effect of pollution introduced at the Olin perchlorate site in Morgan Hill. We'd be certifiably crazy to allow contamination of this resource when we have the legal means to stop an illegal project, or to extensively revamp it so it no longer has those impacts.

To reiterate, *at a minimum* I beg you require every single mitigation identified to date, and strongly urge you to require a redesign of the project as though it were never there, so as to ensure a legal project that duly takes into account all significant impacts. Anything less is caving in.

Sincerely yours,

G. Reid Fisher
1670 Chris Lane
San Martin, CA 95046

February 4, 2004,

Mr. Rowe,

I live in on a small property west of the Fry Golf course. Over the years I watched to reconstruction of what used to be the Flying Lady. I assumed this was all being done legally. When I noticed the berm being created along Foothill Avenue, I wondered how the neighbors would be affected. After the trees were planted on top of the berm, the newspapers started writing articles about the golf course, I was saddened but not surprised that some guy with a lot of money thought he could do whatever he wanted. I don't believe the group that now owns this property cares at all about wild life, traffic increases on our rural streets, groundwater, or what they've done to their neighbor's properties.

It would be outrageous to continue to allow this arrogant behavior to continue. I sincerely hope that those of you who are responsible for enforcing codes and laws here step up to the responsibility of making this group of renegades do what is right by the neighborhood, and not allow money and influence to be the downfall of a wonderful small town community.

Thank you for your time and attention,

Dawn Peru
San Martin

City Of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037
Attn: James Rowe
Draft Environmental Impact Report for "The Institute Golf Course"

To Whom It Concerns,

This letter is a submission of our concerns regarding the Fry's AIM Golf Course DEIR dated December 2003. We have reviewed the findings and are concerned about the following:

1. Water Quality

The surrounding property owner's sole source of water is from private wells. Nitrate loading from fertilizing the golf course, along with pesticide use will potentially degrade an already fragile aquifer. We believe that our own well, which has shown increasing nitrate levels, is related to the golf course development. We feel that the city of Morgan Hill needs to take every precaution in protecting the groundwater supply. The city of Morgan Hill needs to require that the project proponent implement all proposed mitigation processes to alleviate the nitrate loading potential. The city of Morgan Hill should monitor the project proponent for full compliance since it is <u>not</u> their business practice to comply with the laws and ordinances as set forth.

2. Water supply

The golf Course will require a significant amount of water to maintain. The DEIR dated December 2003 states that the Golf Course water requirements are on average approximately 437,500 gallons per day. This greatly exceeds the amount of groundwater recharge that occurs locally. It was found that the net result of the continued operation of the existing course, as currently designed, may be a decline the groundwater levels beneath the project site and beneath existing water wells serving neighboring properties. The city of Morgan Hill needs to warrant that the project proponent will not deplete the groundwater supply, which serves the surrounding properties and community. The project proponent must be required to implement all mitigating processes as stated in the DEIR dated December 2003. The golf course should be monitored regularly for full compliance.

3. Flooding

The DEIR states that the AIM project will exacerbate existing flood conditions, causing worse and more frequent flooding problems on the roadway and on other nearby properties. In order to eliminate this flooding condition and damage to nearby properties the city of Morgan Hill should require the project proponent to re-design the drainage systems for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions.

Our property has been experiencing increasing run-off and flooding during heavy storms as the project has developed. This flooding is coming from the direction of the golf course (see enclosed pictures) and has forced us to have additional financial burden to mitigate the flow.

Also noted, during a walk-.by of the property is a newly installed drainpipe to the Foothill Ave. culvert. This newly installed drain appears to be draining from the other side of the berm and is located just north of E. Middle Ave on Foothill Ave.

4. Waste Disposal

The project proponent should not be allowed to use the site for a dump. Piles of debris have been seen on the property along Foothill Avenue.

5. Aesthetics

The golf course has planted hundreds if not thousands of trees along a built up berm. These trees already obstruct the view of the neighboring properties on Foothill Ave. and in a few short years will be of a height that will severely impact the view of the hills. According to Sunset's Western Garden Book, most redwood trees grow rapidly and reach 70 –90 feet in height. Most people in our neighborhood purchased their homes because of the proximity to the hills and the beautiful views they present. This degradation will undoubtedly negatively impact the value of our home.

Also, recently installed is an **unsightly** stick and chicken wire fence just outside a row of Italian Cypress which are know to grow in excess of 60 feet in height. It seems as if the goal is to shelter the golf course from the surrounding San Martin community. It is our opinion that the golf course is sparing no expense at making the facility beautiful from the inside but very UGLY to the surrounding neighbors on the outside.

6. Traffic Impacts

The findings in the DEIR are in adequate since they do take into consideration the nature of the quiet rural residential area that the project is located in. A study should compare the pre-development traffic flow in contrast to the projected increase in flow of traffic and the impact to the quality of life in the surrounding area.

7. Golf Tournaments

While the project proponent has requested to hold golf tournaments and the city of Morgan Hill maintains that this will not be permitted, some form of reassurance through stiff fines and penalties should be implemented by the City of Morgan Hill for violation. We have no confidence that the project proponent will refrain from holding golf tournaments even though they are not be permitted, since they have not complied with the laws and ordinances to date.

Hopefully the City of Morgan Hill will address our concerns and not allow the project to negatively impact it's neighbors in San Martin and continue to blatantly disregard the development process.

Thank you for your consideration. Should you have any further questions, please contact us at (408) 778-8206

Sincerely,

Denise & Bruce Matulich
14810 Bartlett Ct.
San Martin, Ca 95046

Mr. Dennis Kennedy, Mayor
City Council Members
City of Morgan Hill

February 5, 2004

Subject: Permitting for the American Institute of Mathematics (AIM) & Golf Course

I wanted to take this opportunity to clarify and expand a bit on the informal remarks I made at the town meeting on Wednesday March 4, 2004 preceding your regularly scheduled Council meeting. But, first I'd like to say that until last evening I did not appreciate how difficult a task you in our local government face in meeting the needs of the community with the broad diversity of opinion on issues of importance like the one we are discussing. My hat is off to you for taking on this challenge for your community.

Background:

I am a resident of Santa Clara County in the local jurisdiction of San Martin, California at 14305 Foothill Avenue. My home is on a five-acre parcel located across the street from the site location for the proposed AIM center, and the currently existing golf course. My interest in the issue is from two perspectives: 1) as a local resident (5 ½ years at the current address/24 ½ years in South County) and 2) as a long-time advocate for math and science initiatives in Silicon Valley.

By way of additional background, I am a degreed Mechanical Engineer (BS/MSME) from UC Berkeley (1963/1966), and a retired Silicon Valley executive, currently engaged part-time in business consulting and part-time in a number of not-for-profit education initiatives.

I sit on two technology-company boards of directors, and two other company advisory boards. I am a past-president of the Santa Clara Valley Chapter of the National Society of Professional Engineers. I was chairman for eight years (1992 – 2000) of the Engineering Industry Advisory Council for the College of Engineering at SJSU. I was Co-Chair of the International Science & Engineering Fair 2001 board of directors. I currently sit on the board of directors for the Synopsys Championship Foundation which oversees/manages the Silicon Valley Science & Engineering Fair network. I also sit on the board of directors of the San Jose State University Foundation. And, I currently act in an advisory capacity to the Jose Valdes Summer Math Institute, an eastside San Jose program to prepare under-represented middle school children for high school algebra and beyond.

Perspective As A Local Resident/Homeowner:

As a local resident/homeowner, my perspective on the proposed siting of the AIM center and attendant golf course is that it should be approved and allowed to go forward, assuming that appropriately engineered/approved environmental mitigation is implemented. I believe that the net result of the golf course, with appropriately engineered/approved environmental mitigation, can be an environmental enhancement to the area. I do not mind at all living across the street from the golf course.

'Visual Impact'

Unlike some of my neighbors, I'm not particularly bothered by the fact that the property owner has chosen to bound his property with a forest of Italian Cypress trees. That 'forest' the owner has chosen to plant is an environmental asset, converting C02 to Oxygen and making our local air more breathable. And, if the owner's desire for privacy results in ringing his property with trees, I believe that should be his prerogative, providing there is no adverse environmental impact.

'Flooding Impact'

One of my neighbors has raised the issue of flooding as a major concern relative to the golf course and the proximity to their property. I cannot speak for their situation. However, I can say that in the 5-½ years of my residing at my current location I've not experienced one instance of flooding due to water crossing over Foothill Avenue from the golf course to my property.

Flooding during the rainy season is, however, a regular occurrence on the flat lands bordering on Foothill Avenue between Maple Avenue and San Martin Avenue. The flooding seems to be attributable to two key factors, 1) we have about three to four feet of dense clay as topsoil, above a sand-like silt layer of subsoil and 2) we are in a natural low spot at the base of the foothills. The clay topsoil becomes quickly saturated and just doesn't allow for good percolation down to the subsoil and into the aquifer. This results in significant water accumulation in low spots all over my property, which has resulted in water flowing into my garage and flooding of a number of the sidewalks crisscrossing the property.

To redress this flooding tendency we have installed a number of drains and sumps in strategic locations to collect the runoff and pump it through underground pipes to the back of our property. The runoff is pumped into a 15,000-gallon capacity percolation pond at the back of the property. This flood control mitigation was necessitated by the specific nature of our property, it's topsoil and our location at the base of the foothills, and is in no way related to or caused by the presence of the golf course across Foothill Avenue. I suspect that a number of my neighbors on this stretch of road have similar problems with which they are contending.

'Ground Water Impact'

As regards the issue of Nitrates in the ground water, I have not had our well water tested, either recently or at the time we purchased the property 5 ½ years ago. So, I cannot speak to any change that may have occurred. We use our well water for irrigation only.

However, I think that it is important to give full consideration to all possible sources of 'reported' increases in ground water Nitrates, before concluding that the golf course is the culprit. My neighbors and I live on ground that has been used for agricultural purposes for decades. And, there is currently significant acreage from Tennant Avenue to San Martin Avenue, bounded by Hill Avenue, Center Avenue and Foothill Avenue, which continue to be planted in row crops every year. If I had to venture a guess, I'd say the fertilization of these crops that bound our properties has a more significant impact than the golf course on our local ground water Nitrates. I do not know what environmental controls/mitigation the local farmers are required to employ, but I suspect that they are a good deal less stringent and less formal than those described Wednesday evening as currently being employed at the golf course to manage the amount of Nitrogen and water used in fertilization and irrigation.

I do find the data described at the meeting regarding the lowering of Nitrate levels after aeration in the irrigation pond(s) on the golf course to be very interesting and potentially reassuring. If that can be validated to the satisfaction of qualified experts, it does suggest that under current conditions the golf course might not be causing an increase in Nitrates, but in fact may be providing some dilution.

A review of the available data by an independent 'expert', contracted by the City, might be an appropriate course of action to de-fuse the emotion surrounding this issue and ensure the perception of complete objectivity. Such an independent review could determine what valid conclusions can with confidence be derived from the existing data, and what additional data might be necessary to arrive at a resolution to the open questions. It would be important that any such independent review consider all major potential sources of Nitrates; i.e., both agricultural land use and the golf course.

Perspective As An Advocate For Math & Science Initiatives:

From my perspective as a long-time advocate for effective math and science initiatives in Silicon Valley, I'm excited about the prospect of re-locating the AIM facility to Morgan Hill. I believe this move is of great potential value to the local community and school system.

In it's relatively short lifetime, AIM has established itself as a highly successful 'think-tank' for mathematics problem solving and enrichment, while also developing programs with local schools like Math Counts and Math Councils which help to accelerate and expand the math learning experience of our future workforce.

Math is a fundamental building block and pre-requisite for pursuing a college education following high school. In our work with the Jose Valdes Summer Math Institute we have learned that it is possible to take young people with no family higher education legacy, give them a solid founding in mathematics at the middle school level, with a resulting high percentage later being accepted to college. Mathematics is one of the most important fundamental building blocks for the Information Age and the lifestyle it affords to all of us. And, AIM brings with it a prestigious track record of achievement both on the higher academic level and in helping local middle schools and high schools.

AIM is unique even when compared to our local universities, with better than a 75% hit rate on National Science Foundation grants to applications. Not even Stanford or Berkeley can match their achievement in this regard. They have done an impressive job, in a relatively short period, at establishing a track record of excellence on a par with these two prestigious universities, albeit with a more narrow focus.

For me the bottom-line is that AIM will be an asset to our local community on a par with the wonderful new Community Center in Morgan Hill. It will bring both value and prestige to our local community. We need to find a way to work through the difficulties to make this a reality.

Thank you for the opportunity to express my opinions before you Wednesday evening. I think this is an important initiative for our community.

Sincerely,

Dana C. Ditmore
14305 Foothill Avenue
San Martin, California 95046
(408) 686-0216

From: "David Cohen" <dcohen@garlic.com>
To: <general@ch.morgan-hill.ca.gov>
Date: Fri, Jan 30, 2004 2:58 PM
Subject: Citizen Inquiry/Feedback form

First Name: David
Last Name: Cohen
Phone: (408) 779-0500
E-mail: dcohen@garlic.com
Prefer to be contacted by : byEmail
Department Involved: General information
Inquiry/Comment: Regarding the golf course EIR, I think the city should fine the course for proceeding without the proper permits and create a list of operating conditions and require them to live within the rules. Tearing out the golf course is ridiculous and would remove a valuable asset from the community.

From: Bernd Sturmfels <bernd@Math.Berkeley.EDU>
To: <general@morgan-hill.ca.gov>
Date: Fri, Jan 30, 2004 7:15 PM
Subject: AIM

Dear Members of the Morgan Hill City Council:

I am a Professor of Mathematics and Computer Science at the University of California at Berkeley. The purpose of this e-mail is to tell you about the importance of the American Institute for Mathematics for the international scientific community. Mathematics is fundamental for all of the sciences and engineering, but, in contrast to many of the fields it serves (e.g. molecular biology), research in mathematics does not need many resources beyond a place to meet.

My native Germany has led the way since the 1950s with the world-famous conference center in Oberwolfach, a small town in the black forest. The conference facility in Oberwolfach runs weekly workshops, fifty per year, in different field of mathematics and its applications, and its impact has been incredible. The communities of Wolfach and Oberwolfach greatly appreciate the presence of the mathematicians, who are a low-impact group, respectful of local customs and rules, and a steady source of income for the local businesses.

Sadly, there has never been a comparable facility in the United States - UNTIL NOW. The proposed conference center of the American Institute of Mathematics at Morgan Hill is supposed to change all that, and finally put mathematical researchers in North America at par with their colleagues in Europe.

What is proposed for Morgan Hill is similar to Oberwolfach, and I urge you to browse the website http://www.mfo.de/ and, even more important, to contact the local authorities in Oberwolfach (http://www.oberwolfach.de/) to learn more about the (positive) impact of this famous mathematical research facility in the (environmentally sensitive) Black Forest area.

Mathematics researchers world-wide are now looking to Morgan Hill. Will AIM succeed in building a U.S. counterpart to Oberwolfach ?? All of us very much hope so !! Of course, being a faculty member at Berkeley, we are particularly happy about the proximity of Morgan Hill to "the best public university in the world".

I understand that the Morgan Hill City Council will discuss the AIM proposal shortly. The choice is whether Morgan Hill will be on the international research map, or not. Please do decide wisely.

It would be my pleasure to answer any questions you may have.

Sincerely,

Bernd Sturmfels

From: "Bill Duke" <wdduke@ucla.edu>
To: <general@morgan-hill.ca.gov>
Date: Fri, Jan 30, 2004 9:01 PM
Subject: American Institute of Mathematics in Morgan Hill

Dear City Council Members,

I am a Professor of Mathematics at UCLA. I am writing in support of the American Institute of Mathematics (AIM) and their intention to be located in Morgan Hill. Although it has only been in existence since 1994, under the direction of Executive Director Brian Conrey AIM has quickly risen to the status of an internationally recognized research institute, in scope and activity comparable with MSRI (see http://www.msri.org/) in Berkeley. AIM has Washington sponsorship through substantial NSF funding and its Board of Advisors and Scientific Research Board consist of some of best and most influential mathematicians in the country.

Being home for AIM will have a number of benefits for Morgan Hill, the most obvious being educational and cultural. On the educational front AIM sponsors math outreach programs designed to interest and educate people in math at many different levels. This type of activity is exemplified by Dr. Helen Moore's recent talk to the San Jose Math Circle. Mathematical circles are weekly gatherings of students of high school age or younger. They work on problems involving complex and advanced topics and are guided by mathematicians and educators, among them AIM's Brian Conrey and Helen Moore. It seems clear that an organization involved in this kind of beneficial activity should be welcomed by the parents of Morgan Hill. AIM also has an impressive record of sponsoring public lectures by scientists and well known authors of science and mathematics books. These have been very popular and fill a cultural gap for the growing number of people who are curious about recent developments in science and math.

In short, AIM will provide an impressive scientific presence in Morgan Hill and their well established community outreach activities will significantly benefit educational and cultural life there.

Should you wish to discuss any of these issues with me I can be reached at (310)267-7519.

Sincerely,
William Duke
http://www.math.ucla.edu/~duke/

From: "Mary Smathers" <mksmathers@yahoo.com>
To: <general@morgan-hill.ca.gov>
Date: Sat, Jan 31, 2004 7:23 PM
Subject: Please consider positive benefits of the American Institute of Mathematics

Dear City Council Members--

As you move ahead with difficult decisions, please consider the many positive benefits that the American Institute of Mathematics will bring to our community if it is allowed to move its headquarters here. Dr. Conrey, Director of the Institute, has already volunteered hundreds of hours with local middle schools students to develop their aptitude and interest in mathematics. The Math Counts program that he ran with our students last year and is now running for other Morgan Hill students as well this year is an outstanding, positive contribution to local youth and education. If the AIM is allowed to locate here, there will be many more benefits that Morgan Hill will receive for being the headquarters of a major intellectual think tank and educational institution.

Thank you for considering all the positives AIM will bring to our community,

Mary Smathers
Director
Charter School of Morgan Hill

From: "JP Keating, Mathematics" <J.P.Keating@bristol.ac.uk>
To: <general@morgan-hill.ca.gov>
Date: Sat, Jan 31, 2004 12:36 PM
Subject: American Institute of Mathematics

Dear Madam/Sir,

I understand that you are considering an application from the American Institute of Mathematics (AIM) to develop a facility at Morgan Hill. I write to give this application my very strongest support.

I have no direct interest in this - I live in Bristol, England; am not, nor ever have been, an employee of the AIM, and will not benefit financially in any way from the application you have in front of you. I have visited the AIM in Palo Alto several times. I have also visited the proposed site at Morgan Hill several times.

The AIM is an outstandingly successful, internationally renowned facility. It has been associated with some of the most significant advances in the mathematical sciences in recent years. I believe that having it at Morgan Hill would enable it to do even more than at present. And in doing so it would bring Morgan Hill some very considerable benefits (publicity in the most distinguished scientific and technological publications, very distinguished visitors etc). The AIM is a great credit to America, and I believe would bring very great credit to Morgan Hill.

yours faithfully

(Professor) Jonathan Keating
Head of the School of Mathematics
University of Bristol
UK

From: Steven Krantz <sk@dax.wustl.edu>
To: <general@morgan-hill.ca.gov>
Date: Sun, Feb 1, 2004 11:04 AM

To the City Council of Morgan Hill:

I write to you concerning the American Institute of Mathematics, which is developing a site in Morgan Hill. The subject of mathematics has become an integral feature of all aspects of modern life. From gene cloning to space exploration to medical imaging techniques and automobile design, the analytical power of mathematics and statistics is a recurrent and frequently used tool. Having this new mathematics institute in Morgan Hill will make the locale a world center for science and technology. Moreover, the design plan is extremely beautiful. From an aesthetic point of view, the institute will be an asset to the community. The participants in institute activities will be a diverse international collection of scholars who will help to put the region on the map.

In sum, having AIM in Morgan Hill is a win-win situation, a great opportunity, and a wonderful development for California and for the country. I give the project my wholehearted support.

Sincerely,

Steven G. Krantz
Chairman, Department of Mathematics
Washington University in St. Louis

****
Steven G. Krantz *
Chairman, Department of Mathematics *
(314) 935-8120 FAX: (314) 935-6839 *
<home office, FAX> (314) 862-1431 *
Dept. of Math., Box 1146 *
Washington University in St. Louis *
One Brookings Drive *
St. Louis, MO 63130 sk@math.wustl.edu *
Information: http://myprofile.cos.com/krantzs10 *
****

From: Douglas Lind <lind@math.washington.edu>
To: <general@morgan-hill.ca.gov>
Date: Sun, Feb 1, 2004 10:35 AM
Subject: Comment for Draft EIR for Institute Golf Course

February 1, 2004

Morgan Hill City Council
Morgan Hill, CA 95037

I wish to comment on the Draft EIR for the Institute Golf Course, which is being considered by a joint meeting of the Planning Commission and the City Council on February 4, 2004.

My comments concern the American Institute of Mathematics (AIM), which is already an internationally recognized organization to promote mathematics research and scholarship. Its central importance was recently underlined by the award to AIM of one of the highly competitive grants from the National Science Foundation to establish a center for focused research conferences. In addition, AIM seeks to benefit the local community by supporting public lectures and other activities to promote public understanding of mathematics and its role in our lives. It seems to me this would be a very positive addition to any city.

I have had the opportunity to participate in an AIM workshop last October (at its Palo Alto site), and also to visit the Morgan Hill site a few years ago. The prospects of having a world-class mathematics center in Morgan Hill are truly breath-taking. I would urge the City Council and Planning Commission to keep in mind what a wonderful facility this will be when grappling with the environmental issues raised in the EIR.

Sincerely,

Douglas Lind
Professor of Mathematics
University of Washington
Seattle, WA 98195

From: maryjane grover <groverparents@yahoo.com>
To: <general@morgan-hill.ca.gov>
Date: Sun, Feb 1, 2004 4:57 PM
Subject: American Institute of Mathematics Research Center in Morgan Hill

Dear Sirs,

I am emailing you to encourage close examination of the proposal to develop a mathematics research center in Morgan Hill. This center would encourage mathematical conversations on a worldwide scale. As a mathematics teacher at Live Oak High School I am very excited about the many possiblities that such a center would provide for the educational needs of students in the greater South Bay area.

Please consider the value that AIM's center would be for the community of Morgan Hill. I look forward to seeing you Wednesday night.

Sincerely,

Mary Jane Grover
Mathematics teacher, Live Oak High School

From: Steve Gonek <gonek@math.rochester.edu>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 3:43 AM
Subject: American Institute of Mathematics

Dear Morgan Hill City Council,

I understand that the question of building the AIM facility in Morgan Hill is before your council. As a frequent visitor to AIM in Palo Alto since its inception, I strongly encourage you to approve the new facility.

In a few short years, AIM has become one of the best known and respected mathematical research institutions in the world. Having seen the plans for the new institute, visited the lovely town of Morgan Hill several times, and heard the details of how the institute would run, it seems clear to me that Morgan Hill will be greatly enriched by its presence. The institute would be similar to the world famous Oberwolfach facility in southern Germany. I have been there and have seen that the local town has retained its charm and benefited financially from the unobtrusive visitors. Furthermore, your local school district would have the unique oportunity to tap the educational resources afforded by AIM (which has a consistent and impressive record of educational outreach). If ever the phrase "everything to gain and nothing to lose" applied, it is here.

Sincerely yours,

Dr. Steve Gonek
Professor of Mathematics
University of Rochester
Rochester, New York

From: Jeff Vaaler <vaaler@math.utexas.edu>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 7:59 AM
Subject: American Institute of Mathematics

Dear Members of the Morgan Hill City Council:

I am writing to you in support of the American Institute of Mathematics, and in particular their intention to move to Morgan Hill, California. The American Institute of Mathematics (AIM) is a research institute that supports and organizes mathematical research. The people involved with AIM and future visitors to AIM are very highly trained mathematicians who gather together mostly to exchanges ideas on their common research projects. Virtually all visitors to AIM are academics connected to universities or other research institutes. They generally work quitely, and have no harmful effect on their environment.

The director of AIM is Brian Conrey and I have known Brian for over twenty years. Brian is a person of absolute integrity. I have no doubt that the City Council of Morgan Hill can trust his judgement about the impact that AIM will have on your community.

Sincerely yours,
Jeffrey D. Vaaler
Professor of Mathematics
The University of Texas at Austin

From: Robert Megginson <meggin@msri.org>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 6:35 PM
Subject: Message in support of AIM's plans

To the Morgan Hill City Council:

This note is in support of the plans of the American Institute of Mathematics (AIM) for their new facility in Morgan Hill. In the ten years of its existence, AIM has risen from a privately-funded vision of Silicon Valley businessmen John Fry and Steve Sorensen, to an internationally renowned center for mathematical research recognized through major National Science Foundation support as one of the key places that advances in mathematics are being made in this country and the world.

AIM's proposed Research Conference Center in Morgan Hill is particularly the envy of those of us at the Mathematical Sciences Research Institute. In the twenty years we have been in operation, we have maintained that our facility in the Berkeley hills overlooking the Bay is the most attractive and effective place in the U.S. and perhaps the world to do mathematics, but AIM's proposed ARCC is certainly throwing down the gauntlet---It is going to be a fabulous place to do research, and will attract the finest mathematicians in the world to its programs in Morgan Hill.

This is a world-class facility being planned by a world-class research institute. I urge you to give the plans your approval and AIM your full support in this endeavor.

Sincerely,

Robert E. Megginson
Deputy Director
Mathematical Sciences Research Institute at Berkeley

From: Carolyn S. Gordon <Carolyn.S.Gordon@Dartmouth.EDU>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 7:39 PM
Subject: letter in support of AIM

I am writing to urge you to approve the plans for the American Institute of Mathematics (AIM) to move to a new site on Morgan Hill. AIM plays a vital role in stimulating groundbreaking research in mathematics and in encouraging young mathematicians. It is one of only six mathematical institutes funded by the National Science Foundation and is very highly regarded by mathematicians throughout the world.

Sincerely,
Carolyn Gordon
President, Association for Women in Mathematics;
Professor of Math, Dartmouth College

From: William Jaco <jaco@math.okstate.edu>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 3:59 PM
Subject: American Institute of Mathematics

Dear Morgan Hill Council Members,

I wish to encourage and applaud all efforts of the City of Morgan Hill in its support of the American Institute of Mathematics and in helping to make the Institute a reality. The Institute is a vision brought into focus by John Fry and the support of the international mathematics community. Upon completion (there will possibly be no institute like it) it will be recognized scientifically among the leading international mathematics institutes such as The Institute for Advance Study in Princeton, The Newton Institute in Cambridge, The Mathematical Sciences Research Institute in Berkeley and The Mathematics Institute in Oberwolfach. It will gain Morgan Hill inclusion into this wonderful list of places mathematicians gather to discuss the leading research in the discipline.

There are probably many businesses and industries a community can try to attract but rarely is there a chance to add such prestige to the community without any of the typical inherent negatives such as pollution, increased traffic, etc. The American Institute of Mathematics (The Institute) can be a proud center piece to Morgan Hill and the surrounding community.

Sincerely,

William Jaco
Grayce B. Kerr Professor of Mathematics
Oklahoma State University

Former Member of The Institute for Advanced Study and The Mathematical Science Research Institute.

From: "Jeff Hawkins" <Jeff.Hawkins@palmone.com>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 4:04 PM
Subject: Support for AIM

Dear Members of the Morgan Hill City Council,

I am the founder and director of the Redwood Neuroscience Institute (RNI) located in Menlo Park, California. We are a non-profit scientific institute focused on theories of brain function.

I am writing to support the American Intitute of Mathematics' proposal to relocate their offices to Morgan Hill. AIM is on the forefront of applying mathematics to the important problems in science. Although small, AIM is known worldwide as an innovative institute that brings together small groups of leading scientists and mathematicians to focus on important problems. E.g. last September AIM and RNI jointly conducted a workshop on the neocortex, the part of the brain responsible for human intelligence. It was widely regarded as a successful and innovative meeting.

I encourage the Morgan Hill City Council to review AIM's proposal favorably. If you do, I believe the city of Morgan Hill and its citizens will be proud to have such an important national resource as part of their community.

Sincerely,
Jeff Hawkins

Director, Redwood Neuroscience Institute
CTO, palmOne

CC: <jhawkins@rni.org>

From: "Stephen E. Fienberg" <fienberg@stat.cmu.edu>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 3:09 PM
Subject: Letter of support for AIM

Dear Council Members:

I am writing in support of the plans by the American Institute of Mathematics to build a facility in Morgan Hill.

I am Maurice Falk University Professor of Statistics and Social Science at Carnegie Mellon University. I am a member of the National Academies of Science and a past president of the Institute of Mathematical Statistics and the International Society for Bayesian Analysis. I recently attended a weeklong workshop sponsored by AIM in Palo Alto and had an opportunity AIM at work first hand.

AIM is one of a handful of mathematical research institutes supported by the National Science Foundation and in the short time since its creation it has become a true model for the others around the country and a major national resource. Our workshop in December was attended by distinguished mathematicians and statisticians from across the US, Europe, and Japan. Its success was due to the hard work and dedication of the AIM staff. To a person the participants expressed to me and the other workshop organizers their appreciation of the high quality professional leadership and support staff at AIM and the importance of their efforts for te infrastructure of science.

One of my workshop colleagues, Alan Karr, is the director of the National Institute of Statistical Sciences in Research Triangle Park, North Carolina and the home of one of the other National Science Foundation centers. While we were at AIM, we were briefed on the impressive plans for the new Morgan Hill AIM facility. On the basis of the plans we reviewed, this facility will become a major asset to Morgan Hill as well as to the world of mathematics and related sciences.

Those of us in the mathematics community already view AIM as a national treasure and we look forward to participating in its activities once the Morgan Hill facility is built and operational. I can tell you that I only wish we in Pittsburgh had been fortunate enough to have such a resource.

Sincerely,
Stephen E. Fienberg

--
Stephen E. Fienberg
Carnegie Mellon University
Department of Statistics

CC: <Fienberg@stat.cmu.edu>

From: Sharon Sousa <csmhprincipal@yahoo.com>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 1:01 PM
Subject: AIM Proposal

Dear City Council of Morgan Hill,

I am writing to support the proposed move of AIM to Morgan Hill. To have a prestigious institute such as AIM located in Morgan Hill would be not only an educational benefit to the citizens of Morgan Hill and the surrounding areas, but also a cultural benefit, as well.

I realize that Morgan Hill is looking to the future and soliciting opportunities for Morgan Hill to be a "destination" and not simply an appendage to San Jose. Providing a welcoming educational and cultural climate in Morgan Hill is certainly an essential element in attracting socially relevant opportunities to Morgan Hill. AIM will provide a one-of-a-kind experience for the residents of Morgan Hill and undoubtedly will attract other unique organizations to our city.

For the past two years, upper grade students at the Charter School of Morgan Hill have benefited from the MathCounts program developed by Mr. Conrey. It is just one example of the impact that AIM has already had on our local community.

In summary, I urge you to vote in support of AIM locating in Morgan Hill.

Sincerely,
Sharon Sousa, Principal
Charter School of Morgan Hill

CC: <conrey@aimath.org>, Mary Smathers <mksmathers@yahoo.com>

From: Michelle Helvey <mhelvey@oakwoodmh.org>
To: "'general@morgan-hill.ca.gov'" <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 11:58 AM
Subject: AIM comments

To whom it may concern -

My name is Michelle Helvey, and my husband, Ted, and I run Oakwood Country School. We have lived in Morgan Hill for six years.

I would very much like to see AIM come to Morgan Hill. When I consider the many opportunities AIM could provide for our community, I am excited about the possibilities. Education is valued by the Morgan Hill community as a whole. The families who come to our school consider education a top priority, and I know that some of our parents are very interested in having AIM in Morgan Hill.

Having the influence of a reputable math organization like AIM would have lasting effects for students in Morgan Hill. I believe that the math institute would be good for math and for both education and culture in Morgan Hill.

I know you all work very diligently to ensure that our community's needs are met. I appreciate your efforts, and hope that we can all work together to ensure that Morgan Hill grows in the right way. I believe that AIM is part of that good growth.

Thank you for your consideration.

Michelle Helvey
Head of Education
Oakwood Country School

From: Rick Schoen <schoen@math.Stanford.EDU>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 9:50 AM
Subject: American Institute of Mathematics

Dear City Council of Morgan Hill,

I am writing on behalf of the American Institute of Mathematics regarding their desire to relocate from Palo Alto to Morgan Hill. I encourage you to do everything in your power to facilitate this move. AIM is a world-class institute that has fostered a new way of doing mathematics research - focussing on a collaborative team approach - that has had an amazing effect on reseach efforts. The projects they work on are in extremely important areas, and they have had numerous successes already.

The Stanford Mathematics Department has cooperated with AIM on several research projects; indeed, having AIM located in Palo Alto has been a real boon for our faculty and students.

I should also mention that the AIM - Stanford public lecture series has been a phenomenal success. Four out of our five talks resulted in standing room only crowds in excess of 700 at our Dinkelspiel Auditorium. A substantial number of seats are reserved for secondary school students and their families. Before the lecture on string theory by Brian Greene (author of The Elegant Universe), there were people outside offering to buy $7.50 tickets for $65! Mathematics has never been so popular, and it will be very good for the community of Morgan Hill when AIM institutes a similar lecture series in Morgan Hill. Public talks like these can do wonders for raising the profile of mathematics among the teachers and students of a community, and inspiring students to study mathematics further. This effect in turn translates to an eventual work force that is better prepared mathematically for the high tech jobs of Silicon Valley.

In its short existence, AIM has already become a world force in the mathematical sciences realm. It seems to me that any community would be fortunate to have an Institute such as AIM call it home.

If I can be of any assistance in answering questions about AIM or mathematics in general, please feel free to e-mail or call me (650-725-2604). In the meantime I strongly urge you to welcome AIM with open arms. This is a big opportunity for Morgan Hill and the Bay Area.

Sincerely,

Richard Schoen
Mathematics Department Chair
Stanford University

CC: Rick Schoen <schoen@math.Stanford.EDU>

From: Andrew Granville <andrew@DMS.UMontreal.CA>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 11:45 AM
Subject: For Morgan Hill City Council meeting on Wednesday

To the Morgan Hill City Council:

I understand that you are considering a proposal from the American Institute of Mathematics to move from Palo Alto to Morgan Hill.

The American Institute of Mathematics is a small new organization seeking to support and encourage mathematical research at the very highest level in the world. Rather than attempting to fund many activities like most funding agencies, AIM has consistently tried to put its money into the most exciting new possibilities in theoretical mathematics and to make it easy for experts from around the world to meet and discuss ideas; and hopefully make big breakthroughs through such timely interactions.

So what environment do top theoretical mathematicians require to work? Most important is peace and quiet, some well lit rooms with good blackboards, a decent library and internet connection, pleasant places to walk outdoors, places to discuss quietly or to be in quiet repose, and good cuisine at the end of the day. Ours is a contemplative profession and we greatly value a nice environment to help in that process. Thus the move from the back of a Fry's megastore in Palo Alto to Murray Hill will surely greatly increase the value to the world of mathematics (and science) of AIM! And I hope that the local community would find it stimulating to be at the center of such activity.

Let me conclude by noting that the most famous private research institute in the world of mathematics is the Institute for Advanced Study in Princeton; this was created to house Einstein and other Central European Jews escaping Nazism in the 1930s. For the last thirty years there has been tremendous pressure to build in the Princeton area as wealthy New Yorkers and wealthy New York businesses (such as the Wall Street Journal!) have tried to escape the city. In that ongoing rural tragedy, the only woods left in the Princeton area nowadays are those owned and maintained by the Institute for Advanced Study, and the only farmland left in the Princeton area nowadays is that owned and maintained by the Institute for Advanced Study. While various groups have tried to remove ownership of these last few refuges from the Institute's hands, the Institute has stood firm (I am proud to report), and shows the value of entrusting environmental areas to a group of people who have long consciously recognized that they have the most to gain by preserving woods, farmland and greenspace.

Good luck with your deliberations.
Sincerely,

Andrew Granville, Université de Montréal,
Chaire de Recherche du Canada.

CC: <andrew@DMS.UMontreal.CA>

From: Roger Heath-Brown <rhb@maths.ox.ac.uk>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 8:56 AM
Subject: Math Institute at Morgan Hill

Dear Sir,

I'm writing about the proposal by the American Institute of Mathematics for a conference centre at Morgan Hill. I'm a mathematician, but I also have real interests in conservation issues. There are three of points I'd like to make.

Firstly, this is a great opportunity for Morgan Hill. It would bring in the world's top mathematicians on a regular basis, making the place synonymous with scientific excellence.

Secondly it would be a great thing for mathematical science. AIM has a novel and unique approach to the encouragement of mathematical collaboration which is completely dependent on the success of this project. The proposal is not just for "yet another conference venue", it is for something rather special.

Thirdly, there is an institute somewhat similar to that proposed for Morgan Hill, at Oberwolfach in Germany. Although Oberwolfach is a village with a population of a few hundreds only it is renowned amongst mathematicians world-wide for its institute, of which it is justly proud. It is set in a beautiful part of the Black Forest, in an area which is undoubtedly environmentally sensitive. However the institute appears to have had no adverse effects there on the surroundings, and indeed those running it seem to take every care to ensure their natural surroundings are properly cared for.

Sincerely,

Roger Heath-Brown
Professor of pure Mathematics
Oxford University

From: ron graham <graham@ucsd.edu>
To: <general@morgan-hill.ca.gov>
Date: Mon, Feb 2, 2004 8:58 AM
Subject: AIM plans

To whom it may concern:

The American Institute of Mathematics is one of the premiere mathematical research centers in the world. It's location in Morgan Hill will certainly bring distinction to your community as well as a steady flow of some of the world's leading mathematical scientists. I believe that any town would be proud to be part of this exciting development (and as a byproduct, enjoy the increased financial benefits that would result).

Sincerely yours,

Ronald Graham, President
Mathematical Association of America

From: Bruno Olshausen <baolshausen@ucdavis.edu>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 10:02 PM
Subject: American Institute of Mathematics

Dear Morgan Hill City Council,

I am writing in support of the American Institute of Mathematics' (AIM) proposed move of their facility to Morgan Hill. I was the co-organizer of a workshop held at AIM last September that brought together mathematicians, psychologists, and neuroscientists to discuss models of brain function. I know I speak on behalf of all the participants in this meeting when I say that AIM fulfills an extremely important role in the scientific community, as well as in the immediate community where it resides. AIM is an up an coming institution that is becoming well known within many scientific circles, and it can only bring prestige to whatever locale they choose to move the facility to. I would encourage you to welcome them with open arms - they will bring vitality to your neighborhood and their presence will be an asset to your community.

Bruno Olshausen
Associate Professor, UC Davis
& Principal Investigator, Redwood Neuroscience Institute

--
Bruno A. Olshausen (530) 757-8749
Center for Neuroscience (530) 757-8827 (fax)
UC Davis baolshausen@ucdavis.edu
1544 Newton Ct. http://redwood.ucdavis.edu/bruno
Davis, CA 95616
&
Redwood Neuroscience Institute (650) 321-8282 x233
1010 El Camino Real, suite 380 (650) 321-8585 (fax)
Menlo Park, CA 94025 http://www.rni.org

From: Brad Jones <brad@mybooksmart.com>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 4:31 PM
Subject: AIM/Conrey

Dear Honorable Council Members,

I would like to publicly express my endorsement of the American Institute of Math and their request from the city that they be allowed to operate at the location they have chosen on the East Side of Morgan Hill. I feel that AIM has did misstep by jumping the gun on their project before having permission granted them by the proper authorities. It seems that the organization decided that it was easier to ask for forgiveness than permission.This sometimes happens because the burden of compliance has become nearly unbearable. That being said, I believe that their goals and usage aligns well with those of the community and the surrounding area. Having the kind of people that AIM will bring to our community(intelligent, dedicated, accomplished to name a few) available as a resource to businesses and to our schools and community organizations seems to easily outweigh the negatives.

I personally have had occasion to work with Brian Conrey(AIM director) during an author event and found him to be sensible, dedicated and easy to work with. I think that the Institute should be in compliance with local and national ordinances and requirements but at the same time hope that you help them along the way and show them the hospitality due such a prestigious endeavor. I believe that AIM intends to make itself a valuable resource to our community. Please try to work with them to keep them in Morgan Hill!

Brad Jones
BookSmart
Building Blocks Toys, Inc.

From: Donald Richards <richards@stat.psu.edu>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 3:00 PM
Subject: American Institute of Mathematics

The Honorable Dennis Kennedy, Mayor
and Members of the City Council
City of Morgan Hill
Morgan Hill, California

Dear Mr. Kennedy, Members of the Council,

Re: The American Institute of Mathematics

I write in support of the proposal by the American Institute of Mathematics to locate within the city of Morgan Hill, and to urge that the City Council view favorably the goals and aspirations of the Institute.

As background to my letter of support, I note the difficulties faced by the United States today with regard to the education of American citizens in the mathematical sciences. Without intending to be hyperbolic, it is clear that the word "crisis" may be fairly used to describe the paucity of American citizens with research expertise in the mathematical sciences. This situation is documented and substantiated in reports from numerous federal government organizations, including the National Research Council and the National Science Foundation.

As part of the effort to address the shortage of American citizens with research expertise in the mathematical sciences, the National Research Council issued in 1992 a report entitled "Educating Mathematical Scientists: Doctoral Study and the Postdoctoral Experience in the United States." This report made explicitly a recommendation for the formation of additional research institutes in the mathematical sciences. In response to that report, the National Science Foundation has provided substantial funding to projects sponsored by the American Institute of Mathematics.

In short, I urge the Council to view the American Institute of Mathematics as an important part of the national effort in the mathematical sciences. The Institute offers the city of Morgan Hill and the state of California an important opportunity to participate in the critical national effort to provide world-class mathematical skills to our citizens.

Accordingly, I hope that your Council will work with the leaders of the Institute to address and allay any concerns raised by residents of your city.

Yours sincerely,
Donald Richards

Professor of Statistics
Department of Statistics
326 Thomas Building

Penn State University
University Park, PA 16802-2111

Tel: 814-865-3993
Fax: 814-863-7114

CC: <conrey@aimath.org>, <moore@aimath.org>

From: "Jeffrey D. Adams" <jda@math.umd.edu>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 9:58 AM
Subject: American Institute of Mathematics

To whom it may concern,

I am writing in support of the American Institute of Mathematics. I organized a mathematical workshop (the Atlas of Lie Groups) at AIM in July 2003, and we are planning a series of workshops there for the next three years or more. This is part of a long term project involving 20 to 30 mathematicians from around the world, which AIM is helping to organize.

AIM is an important supporter of mathematical research. Since the 1960's mathematical research has been largely supported by the National Science Foundation, a federal agency. In the last decade or so NSF support for pure mathematics has declined. It has been crucial that other organizations have stepped in to support mathematical research, notably the Clay Mathematics Institute in Cambridge Massachusetts and AIM.

The research that AIM supports is theoretical mathematics at the highest level. They sponsor a series of workshops on the most important problems in mathematics, and stimulate collaboration among groups of mathematicians and other scientists. While many of the projects they support have no direct applications, many valuable results have come from exactly this type of research. For example results in number theory found unexpected applications to cryptography, and are the basis of security systems for networking and the internet.

In an era when more and more research is required to be focussed on short term applications, it is especially important that institutions such as AIM have the support of their communities and society as a whole.

Jeffrey Adams

==========

Math Department
Room 2310
University of Maryland
College Park, MD 20742

Tel: 301-405-5493
Fax: 301-314-0827
www.math.umd.edu/~jda
jda@math.umd.edu

==========

CC: <jda@math.umd.edu>, <moore@aimath.org>

From: dinakar@its.caltech.edu
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 10:33 AM
Subject: AIM in Morgan Hill

Hi!

I am writing to express my very strong support for the establishment of the American Institute of Mathematics (AIM) in Morgan Hill, CA. I think this move will be a good thing both for Morgan Hill and the mathematical world.

AIM has the potential to be a world class institution for higher research in Mathematics, and Mathematics is the lynchpin behind much of scientific research. But such research involves no labs or chemicals or animals, only a calm, preferably rural, place where talented people from around the world can, in small numbers, come and spend time and work at Morgan Hill, not interfering in the local affairs and not upsetting the environment. Most mathematicians are very sensitive to the environment. The persons running the institute are also very capable and conscientious, both in Mathematics and in worldly affairs. It will certainly be a boon to Morgan Hill to have such a lofty place of research. Look at Princeton in New Jersey which has reaped, and has continued to reap, enormous benefits from having the Institute for Adavanced Study in its midst where Einstein and other great thinkers came to work in peace and harmony. They have a golf course there too, nearby, and it has been maintained with great sensitivity and one sees countless birds and a variety of other creatures sharing the land amicably. I would say it is one of the very few (last?) places in New Jersey which have preserved a pastoral setting. Knowing the people who run AIM, I am sure that their proposed facility in Morgan Hill will be run even more smoothly and with care, providing benefits for both the mathematicans and the people who live nearby.

In sum, I am in total and unflinching support of the proposed Math Institute in Morgan Hill.

Yours truly,

Dinakar Ramakrishnan
Professor of Mathematics
California Institute of Technology (Caltech)
Pasadena, CA 91125

CC: "Dinakar Ramakrishnan" <dinakar@its.caltech.edu>

From: Trevor Wooley <wooley@umich.edu>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 9:59 AM
Subject: American Institute of Mathematics

Dear City Council of Morgan Hill,

I understand that you will soon be considering the planned move of the American Institute of Mathematics to your beautiful city. I would like to add my voice in support of this move, and hope that you will rule favorably on the issue. I have visited the proposed site and am of the opinion that it will be a most conducive location for accomplishing significant mathematics research. I have myself participated in workshops conducted at AIM's Palo Alto facility, and it is apparent that the innovative style of these workshops --- which will be so effectively supported at the proposed site for the Institute --- has a tremendously invigorating effect on mathematicians and their work. The AIM model will undoubtedly be a powerful force for accomplishing the high-level research that is critical to all of science. Scientific disciplines that were largely based on laboratory experiments are being trasnformed by computational modeling into disciplines in which mathematical innovations play a leading role, and sometimes the leading role. Technological advances that underpin our national economy depend increasingly on mathematics research pursued within the past ten years, and sometimes within the past five --- the security of the transmission of this email message to you is just one such example. Morgan Hill has the opportunity to play a key role and achieve prominence as a national center in the mathematics research that is transforming the 21st Century.

I'd like to add a note concerning the stewardship that AIM may be expected to offer in its locale, and here I'll cite the longstanding example provided by a somewhat similar Institute in Germany, at the small town of Oberwolfach in the Black Forest. The Mathematics Institute at Oberwolfach is celebrated the world over as a center of Mathematics Research. However, the tranquil town set into the Black Forest remains largely undisturbed by the presence of this center. Certainly there has been no dramatic expansion of the Institute, and moreover the Institute has served to preserve the forest and pasture in its surroundings against new development. The Mathematics Institute has thus, on one hand, provided an influx of resources, while at the same time offering scarcely any disruption to the community of Oberwolfach. I would expect that the American Institute of Mathematics would confer the same benefits with minimal disruption. In one respect one would anticipate a difference --- US funding agencies prioritize outreach, especially to K-12 students, and so it is very likely that the Morgan Hill K-12 school system may be positioned to profit from mathematics visitors.

I'll finish by urging you again to look favorably on this proposal. Please do not hesitate to contact me if I can supply any additional information.

Sincerely,

Trevor Wooley
Professor and Chair
Department of Mathematics
University of Michigan

CC: Trevor Wooley <wooley@umich.edu>

From: Dale Shipley <dshipley@danasoftwareinc.com>
To: '"general@morgan-hill.ca.gov"' <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 10:44 AM
Subject: American Institute of Math(AIM)

Dear Mayor Kennedy and members of the city counsel,

It has come to my attention that locating AIM in our wonderful city will be discussed at the city counsel meeting this coming Wednesday. I would like to express my support for having this important and prestigious institution in Morgan Hill. AIM will help the local economy, have a positive impact on the local educational community and may ultimately have a positive impact on the future of all human kind. Having such an important institution located here would definitely be a feather in the cities cap.

Thank you for your consideration.

Sincerely,

Dale Shipley

From: Francis Edward Su <su@math.hmc.edu>
To: <general@morgan-hill.ca.gov>
Date: Tue, Feb 3, 2004 12:07 AM
Subject: letter in support of the AIM

To whom it may concern:

I'm writing a letter on behalf of the American Institute of Mathematics (AIM) in support of their proposed move to your community of Morgan Hill. I am an associate professor of mathematics at Harvey Mudd College in Claremont, CA. and as one who has benefited from this fine institution, I would like to affirm the work of the AIM and some reasons why the community of Morgan Hill may benefit from this move.

1. AIM brings mathematicians and other scientists together for week-long conferences that stimulate high-level research, not just in mathematics but in other fields as well. For instance, last summer, I participated in a workshop at AIM, entitled "Geometric Models of Biological Phenomena", which included biologists and statisticians, as well as mathematicians. As a result, many of the participants' work has broadened and moved in the direction of addressing biological questions (including mine). There are only a handful of mathematical institutes in the U.S. and AIM is one of them, and arguably one of the most broad in scope. Thus, AIM is having a great impact on the quality and breadth of research being done in this country.

2. Thus, having AIM at Morgan Hill would give your community a lot of visibility among high-level mathematicians and other scientists. It would Morgan Hill's name on the map among the intellectual community in general. (Just as Palo Alto, CA and Redmond, WA are recognizable on a slightly larger scale for certain institutions in those cities.) This would result in good PR for your community, increasing Morgan Hill's desirability as a place to live.

3. I also imagine that the constant stream of visitors to AIM would provide a stimulus to the local economy. At the same time, those visitors are unlikely to be a source of noise or disruption to residents, as mathematicians tend to be very quiet and keep to themselves.

For all these reasons, I believe your community will enjoy the benefits of having the American Institute of Mathematics as a friend and partner in the community.

Sincerely,

Dr. Francis E. Su
Associate Professor of Mathematics

Francis Edward Su e-mail: su@math.hmc.edu
http://www.math.hmc.edu/~su
Department of Mathematics
Harvey Mudd College v: 909-607-3616

Claremont, CA 91711 fx: 909-621-8366

CC: Francis Edward Su <su@math.hmc.edu>

Morgan Hill City Council
17555 Peak Avenue
Morgan Hill, CA 95307

February 4, 2004

Dear Morgan Hill City Council,

There is much to be gained from having the American Institute of Mathematics (AIM) call Morgan Hill its home.

First of all, AIM is an internationally respected research institute. More than 400 mathematicians from around the world spent a week or more at AIM last year, collaborating on important mathematics problems whose solutions could change the world. AIM's unique style of forming focused research teams takes advantage of the best each individual has to offer. The powerful synergy created has proven to be very effective at tackling these fundamental problems; AIM has published more than 110 research papers detailing our findings. The National Science Foundation clearly believes in this mechanism: they have awarded AIM 21 grants totaling more than $8 million and granted AIM prestigious "Institute Status," a designation shared by only five other organizations in the U.S. Thus, if AIM were located here, then Morgan Hill could rightfully claim that it is supporting fundamental mathematics research on an international scale.

Second, it is reasonable to believe that the level of mathematics education and accomplishment in Morgan Hill could rise significantly if AIM were here. AIM has a significant track record of outreach to students and teachers; San Jose Math Circles, MathCounts in Morgan Hill, and the Bay Area Math Adventures are examples of programs that AIM helped to start and that AIM remains committed to support. Some of the other ideas we are considering implementing in Morgan Hill include a Morgan Hill Math Circle (for high school students), a mathematics research program for teachers, and a Mathematics Mardi Gras - which would be an annual showcase where students of all ages could create and display mathematics projects they had created.

Finally, there is a cultural benefit from having AIM here. AIM has a record of initiating and, with Stanford, hosting, a very successful public lecture series. The five lectures in this series had an average attendance of more than 700. I don't know of any single example of another public mathematics talk with that kind of attendance. Part of the success is that mathematics seems to be enjoying a small amount of the limelight in popular culture at the moment (witness "A Beautiful Mind", "Proof", "Good Will Hunting"). But part is also due to the efforts and commitment of AIM.

American Institute of Mathematics ■ 360 Portage Avenue, Palo Alto, CA 94306-2244 ■ Tel 650.845.2071 ■ Fax 650.845.2074 ■ www.aimath.org

AIM's first venture with a public speaking venue in Morgan Hill resulted in a crowd of nearly 200 packing the Community Playhouse to hear an entertaining talk by the world famous author John Allen Paulos about how numbers and statistics can sometimes mislead you. AIM intends to have at least one such public talk in Morgan Hill per year. We also imagine series of talks. For example, a lot of art features elements of mathematics. it might be nice to have a series of mathematical artists come to town to talk about their creations. Similarly with math and music. Thus, we believe that AIM can impact the cultural life of Morgan Hill. It would be nice for people to think, "Morgan Hill - Mushrooms AND Mathematics."

For all of these reasons, I hope that you will work hard to encourage AIM to relocate to Morgan Hill and once it is here to work with AIM to achieve something amazing for Morgan Hill. This is an unbelievable opportunity.

Sincerely,

Brian Conrey

Brian Conrey
Executive Director
American Institute of Mathematics

From: Brian Conrey <conrey@aimath.org>
To: <general@morgan-hill.ca.gov>
Date: Wed, Feb 4, 2004 1:09 PM
Subject: American Institute of Mathematics

Dear Morgan Hill City Council,

There is much to be gained from having the American Institute of Mathematics (AIM) call Morgan Hill its home.

First of all, AIM is an internationally respected research institute. More than 400 mathematicians from around the world spent a week or more at AIM last year, collaborating on important mathematics problems whose solutions could change the world. AIM's unique style of forming focused research teams takes advantage of the best each individual has to offer. The powerful synergy created has proven to be very effective at tackling these fundamental problems; AIM has published more than 110 research papers detailing our findings. The National Science Foundation clearly believes in this mechanism: they have awarded AIM 21 grants totalling more than $8 million and granted AIM prestigious "Institute Status," a designation shared by only five other organizations in the U.S. Thus, if AIM were located here, then Morgan Hill could rightfully claim that it is supporting fundamental mathematics research on an international scale.

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Sincerely,
Brian Conrey
Executive Director
American Institute of Mathematics

From: <Kpbd@aol.com>
To: <general@morgan-hill.ca.gov>
Date: Wed, Feb 4, 2004 1:44 PM
Subject: council meeting 2/4/03

Dear Council Members,

We are in support of the American Institute of Mathematics (AIM) coming to Morgan Hill. Our son is a gifted student who until the AIM Mathcounts program became available, had no other local opportunity for higher mathematics education and competition. AIM has provided not only our son, but countless other students, with the type of educational support and experiences that have been previously unavailable to our community.

We believe that AIM brings not only educational resources for students, but also for our greater community as well. The Math lecture program by Dr. Paulos was inspirational and well attended by students and residents of all ages. It brought together members of our city and community for a night of wonderful fellowship. In fact, I know of no other opportunity of this sort that has ever been available in our city. There are many of us in the community that feel this is important for us.

We hope that you will consider all the community when you discuss this topic. While local and state education is in difficult times, AIM offers us an opportunity for excellence and recognition. It speaks well of our city to be the leader in this type of educational endeavor. It helps identify Morgan Hill as a city that is willing to support educational endeavors.

We feel that AIM would be a wonderful benefit for our city and our community. It is our hope that Morgan Hill's City Council will support AIM as a welcomed part of our city.

Drs. Kevin and Pamela Stuart

ReedSmith

Patricia E. Curtin
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510.763.2000
Fax 510.273.8832

February 3, 2004

VIA FACSIMILE AND U.S. MAIL

Helene Leichter, City Attorney
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Re: Revised Draft EIR - The Institute Golf Course
Our File No. 360098.10000

Dear Helene:

As you might recall, I am assisting The Institute in the environmental review process for its proposed golf course/mathematics center project in the City. I have reviewed the Revised Draft Environmental Impact Report dated December 2003 (Revised Draft EIR) and I am concerned about the section on secondary impacts. I wanted to share my concerns with you. I am hopeful we can resolve these concerns so that this project can move forward.

While the Revised Draft EIR correctly defines secondary impacts as "those which are caused by the project and are later in time or are farther removed in distance, but are still reasonably foreseeable" (p. 107), it analyzes impacts that are, by definition, *not* secondary impacts. Based on the following, we urge that the analysis on secondary impacts be eliminated from the Revised Draft EIR. The information contained in this section may be appropriate under the "No-Project" alternative discussion or as background information.

ISSUE

In 1997, the City issued a grading permit to The Institute. The City maintains that The Institute exceeded the grading allowed under the permit and, as a result, various significant adverse impacts occurred on the site. The "project" at issue now, however, is a request for a Planned Unit Development (PUD) to construct a math institute and to continue operating the 18-hole golf course. Thus, the purpose of this Revised Draft EIR is to analyze what, if any, significant impacts issuing a PUD may have on *future* conditions of the property based on the property's *current* condition. See, CEQA Guidelines

§15126.2(a). Yet, the secondary impact section contains an analysis that is antithetical to CEQA in that it incorrectly analyzes impacts that might have occurred from past actions.

LAW

An indirect physical change in the environment is "not immediately related to the project, but . . . is caused indirectly by the project." CEQA Guidelines §15064(d)(2). The analysis should consider only those indirect impacts that are "reasonably foreseeable"; the agency need not consider a potential impact that is "speculative or unlikely to occur." *Id.* (d)(3). Furthermore, an agency's analysis should focus on the impacts of the proposal before it, not the preexisting conditions that are not part of the proposal. *Silveira v. Las Gallinas Valley Sanitary District*, 54 Cal. App. 4th 980, 993-994 (1997). "The purpose of CEQA is to protect the environmental from proposed projects, not to protect proposed projects from the existing environment." *Baird v. County of Contra Costa*, 32 Cal. App. 4th 1464, 1468 (1995).

Analysis of pre-development or pre-project impacts is inconsistent with the principle that CEQA is not the appropriate mechanism to analyze or question prior activities even if that prior activity is illegal. *Riverwatch v. County of San Diego* 76 Cal. App. 4th 1428, 1452-53 (2000); *Fat v. County of Sacramento*, 97 Cal. App. 4th 1270, 1280 (2002). As explained by both *Riverwatch* and *Fat*, the real difficulty in developing an early baseline (as opposed to a baseline that exists at the time an application is submitted) is the burden it would impose in determining the true nature and extent of the past acts. *Riverwatch*, 76 Cal. App. at p.1453 ; *Fat*, 97 Cal. App. at p.1280.

DISCUSSION

We believe the secondary impact discussion is inappropriate and should be eliminated from the Revised Draft EIR for the following reasons.

First, the secondary impacts section does not analyze potential impacts that may be *caused* by the project, but rather analyzes impacts that might be caused if the project is not approved. In doing so, the analysis incorrectly analyzes past conditions and not future conditions. This analysis is not consistent with the definition of secondary impacts and thus, is not appropriate. See, CEQA Guidelines §15126.2(a).

Second, we seriously question whether it is "reasonably foreseeable" that the City could or would require the applicant to return the property to the condition that existed before it issued the 1997 permit for two reasons. As noted above, only reasonably foreseeable impacts need to be considered. First, the City cannot require the applicant to return the property to the condition that existed before the 1997 permit was issued by the City because the applicant already acquired a vested right under this permit. The fact that construction activity occurred after this permit was issued does not invalidate the 1997 permit. Second, the City has permitted the applicant to grade and operate the golf course over the years and even issued several temporary use permits that validated this grading activity and use. It would be difficult, if not impossible, for the City to now reverse these decisions.

ReedSmith

Third, the legitimate concern raised in *Riverwatch* and *Fat* regarding the difficult task in determining what past acts did or did not occur is so evident in the present situation. The drafters of the Revised Draft EIR are using different information than that information provided by the applicant to demonstrate what the property looked like before the 1997 grading permit was issued. The applicant went to painstaking lengths to document what the site looked like before and after the 1997 permit was issued. Yet, the drafters are not using this information in their analysis. We are not clear what information is being used by the drafters or how their information was generated in making their assumptions and determinations. All we know is that the information and assumptions are incorrect as shown by the following few examples.

1. The applicant did not remove 0.5 acres of riparian habitat as claimed on page 110 of the Revised Draft EIR A comparison of the pre-construction aerial photograph and the post construction aerial photograph contained in the *Analysis of the Pre-and Post Development Habitat Conditions* prepared by the applicant and submitted to the City, shows the riparian vegetation is unchanged.

2. The Revised Draft EIR claims at page 110 that the applicant removed "as many as 50 ordinance-sized trees" during golf course construction. The Revised Draft EIR recommends that the applicant replace these trees at a 5:1 ratio. Tree Health Professionals surveyed the trees on site in April of 1997. This survey was provided to the City. This survey noted the ordinance-sized trees on the property. None of these ordinance-sized trees were removed; rather these trees continue to flourish on the site. Also, as noted in the *Analysis of the Pre-and Post-Development Habitat Conditions*, the applicant planted over 11,000 large sized trees to compensate for the trees that were removed. Yet, this fact is not included in the analysis on secondary impacts.

3. The Revised Draft EIR at page 110 assumed all the lakes or ponds on the property were adequate breading sites for the California red-legged frog (CRF). It was also assumed that these water courses actually contained CRFs. Based on these inaccurate assumptions, the Revised Draft EIR recommends that the applicant mitigate for this perceived loss. As shown in the *Analysis of the Pre-and Post-Development Habitat Conditions*, these lakes were not adequate habitat for the CRF or any other special status species. Moreover, as part of the 1997 grading permit, the applicant replaced 3 acres of lakes with over 5 acres of lakes. These new lakes were created to provide suitable habitat for the CRF. Thus, the grading activities had a beneficial impact on the CRF and other special status species. Yet, this beneficial impact was not mentioned in the analysis.

These few examples show that the analysis incorrectly assumed impacts that did not and do not exist. This real and critical "difference" in information only complicates the environmental review of the project and leads to a confusing and inaccurate document.

ReedSmith

Fourth, because the drafters of the Revised Draft EIR feel they have no way of confirming what occurred in the past, they are making assumptions on what might have occurred. These assumptions lead to impacts that are not real and mitigation measures that are unnecessary and wholly inappropriate. As you know, EIRs cannot be based on assumptions. So that the true impacts of a project can be determined and appropriate mitigation measures created, an EIR's analysis must be based on facts, reasonable assumptions based on facts, and expert opinion supported by facts. CEQA Guidelines §15384; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990). This section clearly fails to include this required degree of information.

Fifth, allowing this section to remain in the Revised Draft EIR can serve as an improper mechanism for the City to extract commitments from the applicant (through mitigation measures) to address impacts that did not and do not exist. CEQA requires mitigation measures to be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established in case law. CEQA Guidelines §15041(a). In creating mitigation measures, the City must ensure that the measures actually relate to the impact caused by the project. The City cannot try to force an applicant to provide a benefit (through mitigation) unrelated to the impacts or that would do more than fully mitigate the impacts of the project. See, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996). As shown above, the impacts identified in this section are not real and thus, are not caused by the project. Accordlingly, the mitigation that follows cannot be imposed on the applicant.

Sixth, assuming the analysis is correct as an impact analysis, it does not contain a discussion of those impacts that might occur in returning the property to its original condition. As a result, the City cannot require the applicant to return the property to its original condition without first having the benefit of such an analysis. On a similar point, this analysis also fails to consider and take into account the mitigation that was already imposed on the applicant in the 1997 grading permit.

ALTERNATIVE APPROACH

We strongly urge that the secondary impact discussion be deleted. In the alternative, the information contained in this section can be moved to the Alternatives section under the discussion of the No-Project Alternative. A no-project alternative is the condition that would exist if the project was not approved. The discussion presently contained in the No-Project Alternative should remain because that too fits within the definition of that alternative. See, CEQA Guidelines §15126.6(2). Another place to include the secondary impact information is in the background section of the Revised Draft EIR.

ReedSmith

CONCLUSION

It is clearly inappropriate under CEQA to allow the secondary impact discussion to remain as an impact section. As a result, we ask that it be removed from the Revised Draft EIR as an impact discussion. As an alternative, the information can be placed in the discussion of the No-Project Alternative or in the background section.

Thank you for this opportunity to provide you with my comments. I would really appreciate the chance to discuss this with you in the hope of resolving my concerns. Please call me to discuss this matter at your earliest convenience.

Very truly yours,

Patricia E. Curtin

PEC/kjh

THE INSTITUTE LLC
14830 Foothill Avenue
Morgan Hill, CA 95037

January 29, 2004

Mr. Jim Rowe
Planning Manager
Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

RE: Applicant's Comments on the Revised Draft Environmental Impact Report for The Institute Golf Course

Dear Mr. Rowe:

This letter constitutes comments from the applicant on the Revised Draft Environmental Impact Report for The Institute Golf Course dated December 2003 ("RDEIR").

I. GENERAL COMMENTS

The RDEIR includes many unsubstantiated assumptions. These assumptions were used to create impacts that do not really exist and thus, mitigation measures that are not necessary. An EIR cannot be based on assumptions; rather they must contain facts and analysis. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553. Even if precise data is not available to determine an impact, an EIR at a minimum must rely on informed estimates. Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal. 3d 376.

In order to understand the real impacts of the project, the applicant commissioned studies. These studies were designed to look for actual evidence of significant environmental impacts, and if they occurred or were occurring, to recommend appropriate mitigation measures. The studies covered the full range of the prominent issues including a comparison between past and current conditions, consultation with the previous owner and the regulatory agencies, and monitoring for potential pollutants and for the presence of special status wildlife. The studies were furnished to the City and the City's consultant for use in preparing the RDEIR and are referenced in the RDEIR at Appendix C-4. Additional information consisting of recent monitoring results, and sub-consultant response to the RDEIR, correspondence with the USFWS, and detailed response to 'significant impacts' is attached as Exhibits A-F of this letter.

Please eliminate the assumptions made in the RDEIR, and change the document to reflect the evidence contained in these studies and additional information as further discussed in the following comments.

The primary findings from the applicant's studies are:

1. The claimed environmental impacts associated with Corralitos Creek, such as grading and removal of riparian vegetation, previously attributed to the golf course construction, were created

by actions of prior owners. (RDEIR, Appendix C-4, pg. 13, RCL Ecology/Rana Resources-Appendix C).

2. Laboratory testing of the water in the irrigation lake consistently shows very low nitrate concentrations. This is in direct contradiction to the assumptions stated in the RDEIR. This testing shows that the water used for irrigation, balanced with the correct amount of applied fertilizer; would only have a nitrate diluting effect if seeped into groundwater. (Aquifer Sciences -Exhibit A.)

3. There is no significant decline in groundwater levels after five years of golf course pumping. This indicates that golf course irrigation is having no effect on neighboring wells. (Exhibit A.)

4. Laboratory tests of the water samples from Corralitos Creek show no pesticide runoff or other contaminates, refuting the assumptions in the RDEIR. (RCL Ecology/Sequoia Analytical-Exhibit B)

5. Laboratory testing of the lakes and ponds shows no pesticide content except for an occasional extremely low-level, non-injurious amount of lindane insecticide in two of the lakes on the original golf course. The current golf course operator has never used this chemical; the previous owners may have applied it. These monitoring results refute the pesticide runoff assumptions stated in the RDEIR. (Exhibit B.)

6. Recent surveys for bullfrogs and California red-legged frogs (CRF) found only one bullfrog, and a breeding population of 32 CRFs. This shows that a viable population of CRF is established in the created habitat, and that the bullfrog population can be controlled by direct measures instead of draining the lakes as recommended in the RDEIR, which exposes the young red-legged frogs to predation. (Rana Resources – Exhibit C.)

7. The estimated runoff from the project is considerably less than pre-development flows. This, combined with the operation of the lake system, serves to reduce peak flows so as not to contribute to downstream flooding (Mattern & Associates – Exhibit D).

8. The applicant and USFWS have entered into an agreement that contains off-site and on-site mitigation for the special-status wildlife (Correspondence with the USFWS - Exhibit E).

II. RDEIR CHAPTER II - SPECIFIC COMMENTS

A. Geology and Soils (pages 24- 27)

The statement that the existing golf course was constructed without a grading permit is not correct (page 26). As admitted on page 1 of the RDEIR, in 1997, a grading permit was issued for the reconstruction of the original course. Before this grading permit was issued, a soils report was prepared on the entire site and submitted to the City for review and approval (RDEIR, Appendix B-1). An additional geotech report was prepared in 2003 to test the stability of the soil berms (RDEIR, Appendix B-2). These reports show that the soils on the site are stable.

Moreover, the golf course has operated for over 5 years with no occurrence of soil instability.

Due to this evidence, the assumption of soil instability and need for an additional geotechnical report needs to be removed and replaced with the above discussion showing that the existing grades on the site are stable and therefore, this issue needs to be changed to less than significant.

A. Vegetation and Wildlife (pages 28- 53)

The analysis in this section of the RDEIR does not accurately reflect the pre- and post-construction habitat conditions. These conditions are accurately depicted in the report that was previously submitted to the City (RDEIR, Appendix C-4, pg. 13, Appendix B). Moreover, this analysis does not take into consideration the mitigation measures that the applicant already implemented for the loss of vegetation and wildlife under the 1997-grading permit. Also, it does not recognize the outcome of the monitoring results for the special-status species (Exhibit C).

As explained below, please revise the RDEIR to reflect this information so that the true impacts can be ascertained and proper mitigation created.

1. Additional Information for RDEIR

a Studies and Monitoring Efforts Conducted by the Applicant.

Under direction of expert herpetologist Mark Jennings Ph.D., several studies have been conducted. For example, a study of pre and post-golf course development habitat conditions for the CRF, California tiger salamander, and the western pond turtle concluded that there was an increase in habitat over previous conditions (Appendix B above). In addition, current monitoring for the CRF found 32 individuals from young of the year to adults breeding in the newly created lakes (Exhibit C) . During the monitoring, it is significant that all age classes of CRF were found on site. This shows that the existing lakes and adjacent habitats, as managed under current golf course operations, are supplying all requirements of the species lifecycle.

b. Agreement with USFWS

The applicant and the USFWS have entered into an agreement for the protection of the special status species (Exhibit E.) This Agreement contains off-site compensation for possible impacts to the CRF foraging habitat as well as other sufficient mitigation measures to mitigate the potential impacts on the other special status species. The RDEIR recommends that the applicant abide by additional measures to protect these species. The RDEIR does not contain any evidence or reasoning to justify these additional measures. Since USFWS, as the agency responsible for protecting these species, has already determined that the measures in its agreement with the applicant are sufficient to mitigate this impact, the additional measures in the RDEIR must be removed. Moreover, the additional measures such as buffers and setbacks recommended in the RDEIR are not only inconsistent with those required by the USFWS, but also infeasible as they would prevent the project from occurring. For example, the measure requiring a 200-foot buffer from centerline of creek, combined with an additional 100-feet of setback from edge of riparian

in the upper portion of the creek, would require a total distance of 300-feet. The golf course could not exist with these enormous unnecessary buffers and setbacks.

During a meeting with the agencies and the City last year, the California Department of Fish and Game (CDFG) requested that the USFWS take a lead position in management discussions regarding the CRF, California tiger salamander, and western pond turtle. During this past year, the USFWS and the applicant have worked closely together to reach consensus on a habitat management agreement. A component of the agreement regarding the creek area includes establishment of an undulating buffer, revegetation of the buffer and areas cleared by previous owners, restoration of drainage in specific areas, and general habitat management of the area This management has been deemed by the USFWS to be of benefit to all three of the special-status wildlife species.

c. Mitigation Under the 1997 Grading Permit – original golf course

Before the 1997 grading permit was issued, this portion of the site contained approximate 3 acres of golf course ponds. These ponds were shallow and were not likely adequate breeding habitat for any of the special status wildlife RDEIR, Appendix C-4, pg. 13, Appendix C). Moreover, the ponds before 1997 did not include buffers. As part of the 1997 permit, the applicant replaced the approximate 3-acres of ponds with over 3-acres of deeper, permanent lakes furnishing breeding habitat for all the three special status species and included buffers. Thus, this work , permitted and accepted by the City, cannot be re-analyzed as part of this project.

2. Mitigation Measures

The applicant agrees to many of the mitigation measures identified in this section. Changes are only proposed if the measures are in addition to or inconsistent with those already required by the USFWS, or wherein studies and monitoring show evidence that the claimed potential impacts are not occurring and the associated mitigation is unwarranted, or in some cases, has already been accomplished.

a. California Red-Legged Frog

The applicant agrees to implement the mitigation per the USFWS Agreement. The requirements in the Agreement are similar to those contain in Mitigation Package I at pages 50-51, with the following exceptions:

With respect to the measure on "Manage Non-Native Predator Species," the USFWS has agreed to change the lake draining management to direct bullfrog control, due to the survey findings of only one bullfrog and 32 CRFs.

Therefore, the USFWS-approved mitigation is to have the applicant survey lakes/ponds quarterly during spring, summer and fall months (temperature to be at or above 56 F, for bullfrogs to be active) and to control any bullfrogs found. Seine for occurrence of bullfrog larvae, and destroy any bullfrog egg masses found during spring surveys. Should this method be found not to be

effective, the applicant will consult with the City, USFWS and CDFG to determine an alternate method such as draining.

With respect to the measure on "Vegetated Buffers Around Ponds," water quality sampling shows that there is no concern for pollutant runoff.

With respect to the measure on "Maintain Water Quality of Breeding Ponds/Establish Vegetated Shelves Around Ponds," water quality sampling indicates no concern for pollutants, and the measure is not included in the USFWS letter. However, the applicant will continue to monitor the water on an episodic basis (after fertilizers or pesticides are applied) as mentioned in the first sentence of this measure. This monitoring will be consistent with the requirements of the RWQCB as covered under the SWPPP and NPDES. Should monitoring results indicate a concern for lake/pond water quality, the applicant will immediately cease use of the contaminate in that area, and consult with the City and appropriate agencies to determine a course of action. The remaining portion of this measure is not necessary. With respect to the measure "Water Quality Setback from Corralitos Creek," even though monitoring shows that there is no concern for creek water quality, the applicant agrees to provide the buffers as specified in the USFWS agreement. The minimum width of which also complies with the requirement of the RWQCB Basin Management Plan for this area. Moreover, the applicant will agree to monitor the water quality in the Creek as specified above with respect to the ponds.

With respect to mitigation for the California Tiger Salamander, and Western Pond Turtle, the applicant agrees to implement the CRF mitigation per the USFWS Agreement that also provides for these species.

With respect to riparian habitat, the applicant will implement the USFWS agreement that describes creek riparian enhancement and buffer management as well as riparian enhancement. Fencing of buffer boundaries is not in conformance with the USFWS agreement.

B. Hydrology and Water Quality (pages 54-79)

1. Water Quality Impacts

a Surface Water Impacts

(1). Off-site Flooding and Drainage

The RDEIR mentions one example of localized flooding (page 61). This event occurred in 1999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill Avenue and the property. Due to an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event and immediately had a pipe installed under the new apron.

Since the installation of the pipe, no localized flooding has occurred.

Shortly after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court, located one block east of Foothill Avenue. The person admitted that his flooding problem has two causes. The first is that his property is below grade, and the second is that there is no drainage ditch on the east side of Foothill. This lack of storm water conveyance allows water to travel from the crest of Foothill across lots on the west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

Based on the above explanation, and the results of the Mattern and Associates report (Exhibit D), the golf course does not contribute to downstream flooding, and therefore this impact needs to be changed to less than significant..

(2) .Soil Erosion

Please clarify that the measure on page 74, regarding soil erosion (the fourth bullet) only precludes grading during the rainy season and not all construction. There would be no need to preclude all construction since only grading activities may create this impact.

(3). Pesticides and Herbicides

Please replace the first bullet at the top of page 75 that recommends modifications to the golf course with the requirements contained in the agreement with the USFWS. The buffers required in the agreement are sufficient to reduce this impact to a level of insignificance. Also, please note that the water sampling results in Exhibit B show that the lakes are free of pesticides and other contaminates. The turf grass used on the course serves as an excellent buffer and filters pesticides and other contaminates. The negative findings from the waters sample clearly show that the existing landscaping and practices are adequate to protect the quality of the water.

b. Ground Water Impacts

The proposed project will not create a significant impact on ground water quality (page 66). As shown in the report by Aquifer in Exhibit A, Questa assumed more nitrates would be applied to the golf course then are actually applied. In using the correct concentration of nitrates, Aquifer has concluded that the nitrate concentration would be far less than estimated by Questa. As a result, please change the determination of this impact from "Significant Impact" to "Less than Significant Impact" at page 66.

The nitrogen level in the ground water wells on site is significantly better than the average for

the region. SCVWD examined a well across the street from the project to determine if the project was causing an impact on ground water. The SCVWD noted that the level of nitrate has increased over the life of the well. Examination of the data shows that the increase in the nitrate level in that well occurred before the golf course became operational. Since the golf course has been in operation, the level of nitrate in that well has gone down.

It should also be noted that the well across the street from the project is actually one of only three wells in the region that meets the nitrate standard in the Safe Drinking Water Act.

Nitrogen Loading

The applicant will prepare a nitrogen control plan (NCP). Please clarify that the NCP can be a component of the Chemical Application Management Plan (discussed at page 76-78) since these two plans work together. The plan will describe the NCP plan cts.

The Aquifer Sciences analysis shows that nitrogen application, accounting for low amount of nitrogen in the irrigation water balanced with the remaining applied fertilizer needed by grass and soil, will not contribute to a rise in groundwater nitrate levels (Exhibit A.) In addition, the SCVWD has agreed that the current rate of fertilization is appropriate, and is assisting us to fine-tune applications.

The applicant agrees to continue to monitor surface waters for nitrogen [nitrate (N03) and TKN (N)] on a schedule timed to fertilizer application rates and rainfall. Should monitoring show an increase in the above chemicals, the applicant will immediate cease fertilizing and consult with the City and appropriate agencies to determine if the other items listed in the proposed mitigation should be implemented.

Some of the components recommend in the RDEIR for the NCP are unnecessary or infeasible and we ask that they be modified as follows:

- Remove the last sentence in bullet 3 under Nitrogen Loading, page 75. It is unclear what pre-project conditions are and what portion of the golf course would be included. The important aspect is to make sure the existing applications do not create a significant impact. It is irrelevant how the existing application relates to the pre-project conditions. Moreover, the applicant has already submitted to the City an analysis that shows if any water from the project reached the aquifer, it would dilute the nitrate in the ground water.

- Revise bullet 4, under Nitrogen Loading, page 75. The NCP (and/or CHAMP) will be submitted to the RWQCB for review and approval.

- Revise bullet 5, under Nitrogen Loading, page 75. Please substitute the last word "monthly" to "quarterly." There is no evidence to indicate that the monitoring must occur on a monthly basis. This monitoring is extremely expensive and the nitrate level in the irrigation water does not vary significantly over time. Thus, it would be feasible and more appropriate to require testing on a quarterly basis.

- Revise bullet 6, under Nitrogen Loading, page 75. Please substitute the words "recommendations provided by the NCP."

- Revise bullet 7, under Nitrogen Loading, page 76. Please substitute this bullet with the following: "Appropriate fertilizer will be used according to weather forecast and time of year based on the CHAMP. This fertilizer may include slow release or less soluble form."

- Revise bullet 8, under Nitrogen Loading, page 76. In the second sentence, please include the word "generally" between "shall" and "be" as occasionally dry areas will require additional hand watering.

- Eliminate bullet 10, under Nitrogen Loading, page 76 since the mount of nitrogen loading will depend upon each circumstance. The NCP will dictate the required nitrogen needed to prevent excessive fertilization.

- Eliminate bullets 11, 12, 13 and 14, under Nitrogen Loading, page 76. The requirements in these bullets are no longer necessary now that an agreement has been reached with USFWS. Requirements in that agreement will satisfy the measures identified in these bullets. Also, please be advised that the turf referenced in bullet 13 has been removed.

- Add the following new bullet: "The NCP will be consistent with the creek restoration plan and the requirements identified in the USFWS agreement."

Pesticide and Herbicides

- Please eliminate the term "construct" in the second sentence under this section. As you know, the golf course has already been constructed.

- Revise bullet 1, under Pesticide and Herbicides, page 76. Please substitute this bullet with the following text: "The grass species already in place have characteristics of drought, pest and disease resistance and are appropriate to the area."

- Please eliminate bullet 10, under Pesticide and Herbicides, pages 77-78. This bullet is not necessary. The applicant has already agreed to abide by its agreement with USFWS.

- Revise bullet11, under Pesticide and Herbicides, page 78. Please substitute the word "monthly" in the middle of this bullet to state "episodically based on application schedules.

- Under Pesticide and Herbicides, page 78. Please eliminate the reference to "SCVWD" since they do not have approval authority over the CHAMP.

Lake Water Quality Management and Discharges

- The applicant will prepare a CHAMP and submit the CHAMP to the RWQCB. The CHAMP will include elements that are commonly included in the CHAMP's for other golf courses in the area.

- Remove bullet 2, under Lake Water Quality Management and Discharges page 78. This measure is no longer necessary as reflected in the Mattern Report contained in Exhibit D.

2. Water Supply (pages 80-85)

a. Water Supply Impacts

(1). Domestic Water

Please be advised that the applicant has applied to the City for domestic water for use by the Mathematics Institute.

Information Supplied by the Project Proponent

(2). Irrigation Water

Aquifer Sciences prepared an additional report to respond to the statement made in the second paragraph under this section at page 82 (Exhibit A). That study shows no evidence of groundwater decline after five years of golf course operation. The applicant will continue to monitor the groundwater levels in the on-site wells.

III. RDEIR- CHAPTER III - SECONDARY IMPACTS (PGS.107-115)

The discussion of secondary impacts should be removed since it does not comply with the California Environmental Quality Act (CEQA). Secondary impacts are to look at reasonably foreseeable impacts that are caused by the project, not impacts that will be caused if the project is not approved. Including this discussion of impacts that might have existed in the past in this section of the RDEIR not only creates confusion but is also misleading. It is misleading because the RDEIR is using a baseline that is not accurate but rather based on unsubstantiated assumptions.

The drafters of the Revised Draft EIR are using different information than that information provided by the applicant to demonstrate what the property looked like before the 1997 grading permit was issued. The applicant went to painstaking lengths to document what the site looked like before and after the 1997 permit was issued. Yet, the drafters are not using this information in their analysis. We are not clear what information is being used by the drafters or how their information was generated in making their assumptions and determinations. All we know is that the information and assumptions are incorrect as shown by the following few examples.

1. The applicant did not remove 0.5 acres of riparian habitat as claimed on page 110 of the Revised Draft EIR A comparison of the pre-construction aerial

photograph and the post construction aerial photograph contained in the *Analysis of the Pre-and Post Development Habitat Conditions* prepared by the applicant and submitted to the City, shows the riparian vegetation is unchanged.

2. The Revised Draft EIR claims at page 110 that the applicant removed "as many as 50 ordinance-sized trees" during golf course construction. The Revised Draft EIR recommends that the applicant replace these trees at a 5:1 ratio. Tree Health Professionals surveyed the trees on site in April of 1997. This survey was provided to the City. This survey noted the ordinance-sized trees on the property. None of these ordinance-sized trees were removed; rather these trees continue to flourish on the site. Also, as noted in the *Analysis of the Pre-and Post-Development Habitat Conditions,* the applicant planted over 11,000 large sized trees to compensate for the trees that were removed. Yet, this fact is not included in the analysis on secondary impacts.

3. The Revised Draft EIR at page 110 assumed all the lakes or ponds on the property were adequate breading sites for the California red-legged frog (CRF). It was also assumed that these water courses actually contained CRFs. Based on these inaccurate assumptions, the Revised Draft EIR recommends that the applicant mitigate for this perceived loss. As shown in the *Analysis of the Pre-and Post-Development Habitat Conditions*, these lakes were not adequate habitat for the CRF or any other special status species. Moreover, as part of the 1997 grading permit, the applicant replaced 3 acres of lakes with over 5 acres of lakes. These new lakes were created to provide suitable habitat for the CRF. Thus, the grading activities had a beneficial impact on the CRF and other special status species. Yet, this beneficial impact was not mentioned in the analysis.

IV. RDEIR CHAPTER IV - CUMULATIVE IMPACTS (PAGES 116-120)

The cumulative impact section must be revised consistent with the comments in the letter. Accordingly, since there is more then sufficient evidence to confirm that the proposed project will not create significant impacts or will not create significant impacts that cannot be mitigated, this section can no longer conclude that the project will result in cumulative impacts.

V. RDEIR CHAPTER V - ALTERNATIVES (PAGES 121-127)

We do not believe the No-Project alternative discussion is adequate. The "no-project" alternative must analyze the existing conditions of the property (the golf course with vacant buildings) in relationship to the proposed project (the golf course with a mathematics center). CEQA Guidelines Section 15126(e)(2). The alternative discussed in this section does not meet this definition of CEQA.

CONCLUSION

We hope are comments are helpful. The purpose in providing these comments was to provide a more accurate assessment of the potential significant environmental impacts of the proposed project and to identify those mitigation measure that are necessary and feasible.

If you have any question, please feel free to call me at 408-487-4620. We look forward to working with you and other City Staff on this project.

Sincerely,

Stephen Sorenson

DOCSOAK-9703656.1-PCURTIN

Exhibits A, B, C, D, E, F, G

EXHIBIT A

Aquifer Sciences – Response to Revised Draft Environmental Impact Report

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Exhibit A

AQUIFER SCIENCES, INC.

3680-A Mt. Diablo Blvd.
Lafayette, CA 94549
(925) 283-9098

February 2, 2004
201383

Randy Long
RCL Ecology
329 Mt. Palomar Place
Clayton, CA 94517

Subject: Response to Revised Draft Environmental Impact Report
14830 Foothill Avenue, Morgan Hill, California

Dear Mr. Long:

This letter provides our response to environmental issues raised in the Revised Draft Environmental Impact Report (RDEIR) prepared by Questa in December 2003. Our responses to each issue are presented in the following sections. Data recently obtained from the site has been incorporated into our responses.

Groundwater Production

Table 1 lists flow meter readings recorded for the four onsite water wells over a 5-year period (January 1999 through December 2003). Based upon the data, approximately 445 acre-feet of groundwater are extracted from the four onsite wells per year. This is lower than the 491 acre-feet-per-year value used in the RDEIR and lower than the 500 acre-feet-per-year estimate provided in the Administrative Draft Environmental Impact Report (ADEIR).

Potential Groundwater Depletion

In the RDEIR, Questa suggests that continued operation of the existing golf course, as currently designed, may result in a decline in groundwater levels and cause a significant impact. Questa refers to water levels in Well 25P001 and an unspecified well "farthest away from the golf course." Questa noted a 10-foot difference in drawdown between the two wells from 1997 to 2001.

It is important to correlate water levels between wells located within the same groundwater sub-basin to obtain an adequate comparison. The water levels in Well 25P001 should be compared to those in Well 26P001. Well 26P001 is located cross-gradient and possibly upgradient of Well 25P001. Hence, the water level in Well 26P001 should not be affected by pumping from wells at the golf course and should provide a baseline trend for groundwater elevations in the area. The attached chart presents the hydrographs for both wells.

Upon careful examination of the hydrographs, the water level fluctuations in the two wells exhibit a similar pattern. If groundwater depletion were occurring at the golf course, then the hydrograph for Well 25P001 would show a declining trend at a steeper slope than that shown for Well 26P001. The hydrographs for both wells show the same general slope. Questa asserts that groundwater pumping at the golf course is causing a significant impact. The water level data and hydrographs do not support Questa's assertion.

In the RDEIR, Questa states that "The pumping of groundwater for golf course irrigation will, however, substantially increase the amount of water extracted from the groundwater basin as compared with pre-development conditions and will greatly exceed the amount of groundwater recharge that occurs locally." In the RDEIR, Questa did not state what the amount of groundwater pumping was prior to development. Without knowing the amount of groundwater used prior to development, a comparison of pre- and post-development pumping cannot be made. Consequently, the statement that golf course irrigation represents a "substantial increase" compared with pre-development conditions is not based in fact, but is instead speculation. In the RDEIR, Questa did not state what the amount of recharge to groundwater is in the vicinity of the site. Without knowing the amount of recharge, a comparison of recharge with pumping cannot be made. Consequently, the statement that "pumping of groundwater for golf course irrigation...will greatly exceed the amount of groundwater recharge that occurs locally" is not based in fact, but is instead speculation.

Irrigation Water Quantities

The Institute operates a weather station and computer program that calculates the reference evapotranspiration (ET_o) for the site. The computer program combines irrigation distribution data (such as number of sprinklers, sprinkler spacing, watering pattern, and sprinkler flow rate) with the evapotranspiration data to calculate the amounts of water (and sprinkler run times) for all areas of the golf course. The program calculates the amount of water used per day for irrigation. These data are available for September, October, November, and December 2003. These data combined with the amount of groundwater pumped from the irrigation wells (#1, #2, and #3) are summarized below. (The groundwater production from Well #4 is not significant and is not used for irrigation.)

Month	Irrigation Quantity (gallons)	Groundwater Pumped From Irrigation Wells (gallons)	Percentage of Water Used For Irrigation (percent)
September 2003	11,765,501 (est.)	19,021,600	62
October 2003	13,923,762	14,103,800	99
November 2003	621,660	818,000	76
December 2003	0	0	not applicable

The percentage of water used for irrigation is less than the amount of groundwater extracted due to storage in the lined ponds, evaporation, and other incidental uses. Based upon these data, the average fraction of groundwater used for irrigation is 79%. If 445 acre-feet of groundwater are pumped per year, then 352 acre-feet of groundwater (79% of 445 acre-feet) are actually used for irrigation. This is lower than the 491 acre-feet-per-year value used in the RDEIR and lower than Questa's estimated 500 acre-feet-per-year provided in the ADEIR.

Nitrate Content of Irrigation Water

Irrigation water is pumped from Pond D located near Foothill Avenue. Based upon analytical data obtained for water samples collected from March 2002 to December 2003, the concentration of nitrate (as NO_3) in Pond D ranges from 6.9 to 26 mg/L. The average concentration of nitrate in Pond D during this time period was 17 mg/L.

Additionally, samples of the irrigation water were analyzed for nitrate. The samples were collected from the supply lines that convey water from Pond D to the golf course. The concentration of nitrate in the irrigation water ranged from 17 to 19 mg/L, with an average of 18 mg/L.

The data indicate that the concentration of nitrate in Pond D and the irrigation water is approximately 18 mg/L. We believe that Questa's estimated range of 20 to 50 mg/L nitrate in the irrigation water is much too high, considering the available data. Questa states in the RDEIR that "there is an apparent significant nitrate reduction (about 60%) that occurs in Pond D...The nitrate reduction is most likely attributable to denitrification in the deeper, anoxic zones of Pond D...The apparent nitrate reduction of 60% is not unreasonable." Consequently, Questa's range of 20 to 50 mg/L nitrate overestimates the amount of nitrate being applied to the turf through irrigation water. Now that the recent testing has been done, the actual data for nitrate in irrigation water (approximately 18 mg/L) should be used in the various calculations.

Nitrogen Application Due to Irrigation Water

Questa estimates that approximately 6,000 to 15,000 pounds of nitrogen are applied to the golf course per year from the irrigation water alone. This is based upon using 491 acre-feet of groundwater per year with a nitrate concentration ranging from 20 to 50 mg/L (nitrate as NO_3). As discussed in the sections above, we have obtained actual values for the amount of irrigation water (352 acre-feet per year) and its nitrate concentration (18 mg/L). The corresponding amount of nitrogen applied to the golf course from the irrigation water only is 3,920 pounds per year. This amount is less than Questa's estimate, and does not exceed the projected fertilizer requirement of more than 10,000 pounds per year.

AQUIFER SCIENCES, INC.

Potential Nitrate Impacts to Groundwater

In the RDEIR, Questa estimates that seepage from the golf course contributes nitrate to groundwater in the range of 45 to 96 mg/L. Using the updated values for irrigation water quantities and nitrate concentration in irrigation water, we have revised our estimate of nitrate seepage from the golf course. The amount of leached fertilizer nitrogen is estimated to be 1,090 pounds per year (10% of the estimated applied nitrogen). The amount of nitrogen in irrigation water recharging groundwater is estimated to be 1,960 pounds per year (50% of the estimated amount of nitrate in irrigation water). The amount of irrigation water recharging groundwater is estimated to be 23 million gallons (20% of the amount of irrigation). Based upon these data, seepage from the golf course may contribute nitrate to groundwater at approximately 42 mg/L (nitrate as NO_3). This value is less than Questa's estimate. Additionally, the level of nitrate (42 mg/L NO_3) represents the concentration in the leachate, not in groundwater. Upon reaching groundwater, the concentration of nitrate would be less due to dispersion and dilution.

Please feel free to call us if you have any questions about the report.

Respectfully yours,

Thomas E. Neely, REA II
Senior Hydrogeologist

Rebecca A. Sterbentz, RG, CHG
President

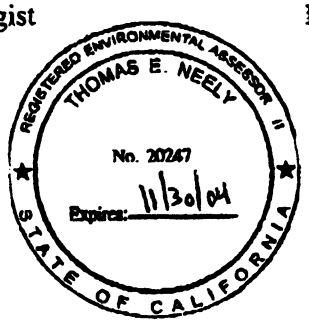

Table 1 (continued). GROUNDWATER PRODUCTION DATA - January 1999 through December 2003
14830 Foothill Avenue, Morgan Hill, California

Month	Well #1 (gallons)	Well #2 (gallons)	Well #3 (gallons)	Well #4 (gallons)	Groundwater Production (All 4 wells) (gallons)	Water Available for Irrigation (Excludes Well #4) (gallons)
January 2001	0	1,792,100	0	17,400	1,809,500	1,792,100
February 2001	0	402,100	100	15,500	417,700	402,200
March 2001	3,521,000	6,064,700	300	18,800	9,604,800	9,586,000
April 2001	1,616,000	7,005,300	0	17,600	8,638,900	8,621,300
May 2001	13,002,000	3,569,600	0	21,600	16,593,200	16,571,600
June 2001	14,487,000	11,578,200	4,508,300	3,800	30,577,300	30,573,500
July 2001	9,486,000	8,229,000	3,540,600	0	21,255,600	21,255,600
August 2001	17,167,000	9,664,500	5,167,800	25,000	32,024,300	31,999,300
September 2001	13,147,000	8,569,200	0	136,400	21,852,600	21,716,200
October 2001	6,908,000	5,655,700	1,500	84,500	12,649,700	12,565,200
November 2001	76,000	2,066,900	0	26,200	2,169,100	2,142,900
December 2001	0	69,800	0	14,900	84,700	69,800
January 2002	1,000	20,100	0	36,500	57,600	21,100
February 2002	0	19,400	2,105,000	29,000	2,153,400	2,124,400
March 2002	1,159,000	5,217,200	1,126,300	37,400	7,539,900	7,502,500
April 2002	5,442,000	7,226,900	2,955,800	36,300	15,661,000	15,624,700
May 2002	12,172,000	7,656,100	414,900	44,400	20,287,400	20,243,000
June 2002	14,931,000	10,361,900	2,612,300	46,300	27,951,500	27,905,200
July 2002	14,501,000	9,890,000	4,149,900	29,300	28,570,200	28,540,900

Table 1 (continued). GROUNDWATER PRODUCTION DATA - January 1999 through December 2003
14830 Foothill Avenue, Morgan Hill, California

Month	Well #1 (gallons)	Well #2 (gallons)	Well #3 (gallons)	Well #4 (gallons)	Groundwater Production (All 4 wells) (gallons)	Water Available for Irrigation (Excludes Well #4) (gallons)
August 2002	10,668,000	4,401,200	1,754,100	34,800	16,858,100	16,823,300
September 2002	14,794,000	600	654,500	29,100	15,478,200	15,449,100
October 2002	4,789,000	6,500	59,100	18,200	4,872,800	4,854,600
November 2002	328,000	1,200	0	31,700	360,900	329,200
December 2002	1,000	500	0	35,500	37,000	1,500
January 2003	1,100,000	0	0	7,900	1,107,900	1,100,000
February 2003	0	2,700	0	5,000	7,700	2,700
March 2003	1,888,000	1,500	0	1,500	1,891,000	1,889,500
April 2003	1,443,000	500	0	1,700	1,445,200	1,443,500
May 2003	7,419,000	400	1,445,300	1,300	8,866,000	8,864,700
June 2003	15,055,000	100	1,590,200	3,900	16,649,200	16,645,300
July 2003	15,124,000	284,000	4,632,400	3,000	20,043,400	20,040,400
August 2003	14,893,000	4,020,600	3,025,800	2,500	21,941,900	21,939,400
September 2003	13,692,000	2,988,800	2,340,800	2,100	19,023,700	19,021,600
October 2003	14,021,000	82,800	0	2,700	14,106,500	14,103,800
November 2003	0	818,000	0	1,900	819,900	818,000
December 2003	0	0	0	1,700	1,700	0
Monthly Average	7,339,300	3,716,295	1,023,232	17,225	12,096,052	12,078,827
Daily Average	241,160	122,113	33,622	566	397,461	396,895

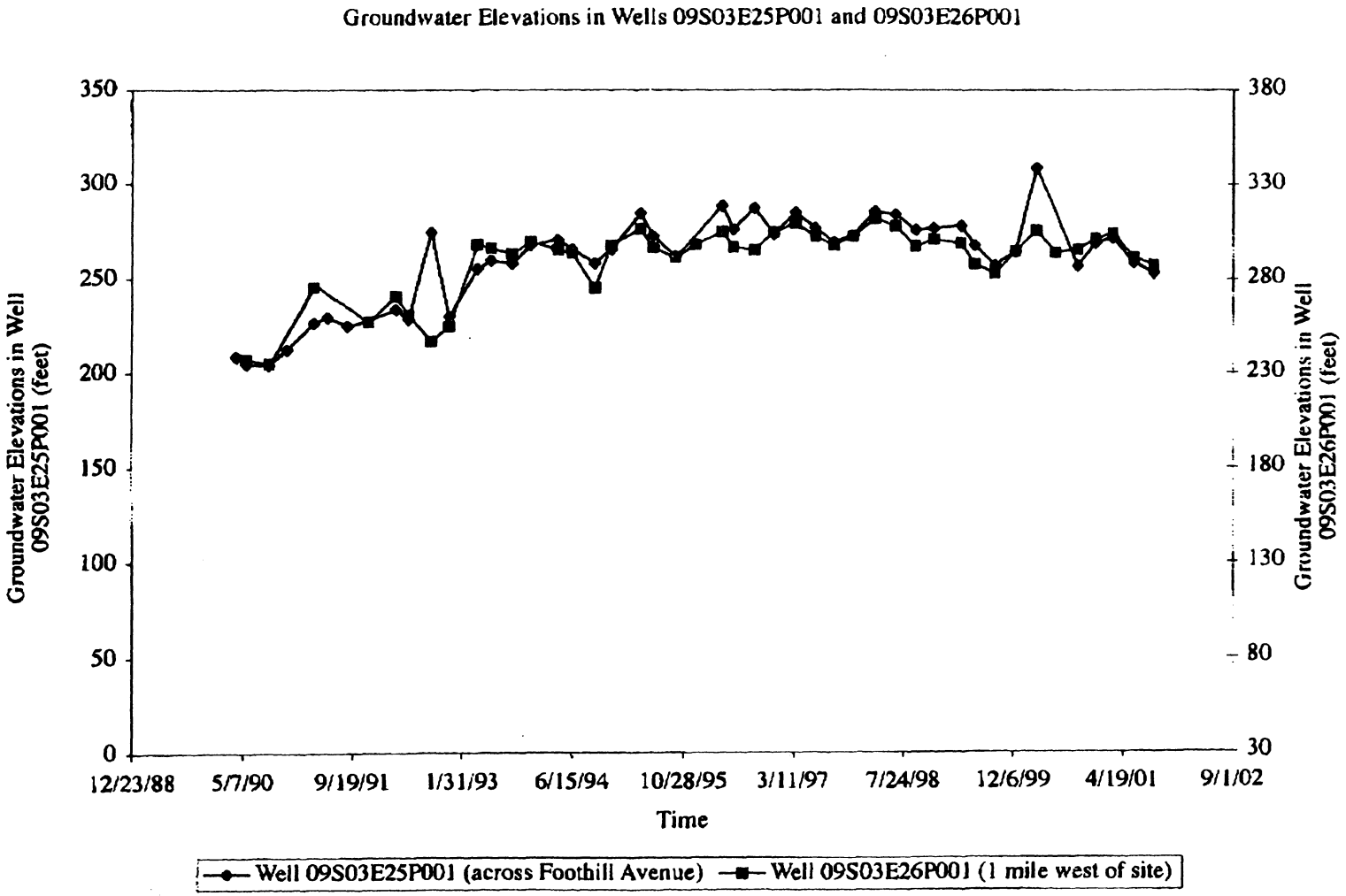
Groundwater Elevations in Wells 09S03E25P001 and 09S03E26P001
Groundwater Elevations in Well 09S03E25P001 (feet)
Groundwater Elevations in Well 09S03E26P001 (feet)
350
300
250
200
150
100
50
0
380
330
280
230
180
130
80
30
12/23/88
5/7/90
9/19/91
1/31/93
6/15/94
10/28/95
3/11/97
7/24/98
12/6/99
4/19/01
9/1/02
Time
Well 09S03E25P001 (across Foothill Avenue)
Well 09S03E26P001 (1 mile west of site)

EXHIBIT B

RCL Ecology/Sequoia Analytical – Summary of Surface Water Sampling

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INSTITUTE GOLF COURSE
SURFACE WATER SAMPLING MAR. 2002-DEC. 2003
RCL Ecology
January 7, 2004

Location *	Date	Nitrate (NO3) (mg/L)	TKN (mg/L)	Pesticides ** µg/L
A	9/4/03	5.3	2.6	ND
A	10/1/03	6.8	2.8	ND
A	11/21/03	4.1	2.6	ND
A	12/9/03	3.6	2.0	ND
B	9/4/03	ND	2.7	ND
B	10/1/03	ND	3.7	0.029 beta-BHC***
B	No sample-Nov.			
B	12/9/03	0.82	3.8	ND
C	9/4/03	ND	3.1	ND
C	10/1/03	ND	6.2	ND
C	11/21/03	2.4	ND	0.025 gamma-BHC***
C	12/9/03	2.3	3.2	ND
D	3/12/02	26		
D	8/6/03	19		
D	8/21/03	16		
D	9/4/03	24	ND	ND
D	10/1/03	17	ND	ND
D	11/21/03	6.9	ND	ND
D	12/9/03	8.9	ND	ND
E	9/4/03	8.4	3.5	ND
E	10/1/03	7.0	1.2	ND
E	11/21/03	1.4	ND	ND
E	12/9/03	1.3	2.9	ND
F	9/4/03	ND	3.1	ND
F	10/1/03	ND	2.5	ND
F	11/21/03	0.96	ND	ND
F	12/9/03	0.62	1/8	ND
G	9/4/03	ND	1.4	ND
G	10/1/03	ND	0.91	ND
G	11/21/03	2.3	ND	ND
G	12/9/03	2.4	0.59	ND
S	9/4/03	34 (Spg.)	ND	ND
S	10/1/03	ND (pond)	4.6	ND
S	11/21/03	3.1 (pond)	ND	ND
S	12/9/03	1.2 (pond)	2.5	ND
I-1	9/23/03	17	ND	ND
I-2	9/23/03	19	ND	ND
C (T &B)	12/30/03	-	-	ND

*A-G indicates Lakes A-G; S – spring; I-1 – Irrigation line 1; I-2 – Irrigation line2, C (T &B) –Creek upper & lower samples

** Includes analysis for organochlorine, organonitrogen, organophosphorus, carbamate and urea pesticides, and chlorinated herbicides.

*** beta & gamma-BHC (Lindane) LC-50 = 1.66µ/L****, previous golf course area.

**** - lethal concentration for fish (50% of fish died when exposed for 9 hours at this concentration). (concentration detected is less than 1/10th of the LC-50)

EXHIBIT C

Rana Resources – California red-legged frog and Bullfrog Survey Results

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RANA RESOURCES
39913 Sharon Avenue
Davis, CA 95616-9456
RanaResources@aol.com

#9201
September 16, 2003

Mr. Randall C. Long
RCL Ecology
329 Mt. Palomar Pl.
Clayton, CA 94517

Dear Randy:

This letter serves as my report of our night-time surveys for California red-legged frogs (*Rana aurora draytonii*) [=CRLF] and bullfrogs (*R. catesbeiana*) [=BF] on the Institute Golf Course during the evening hours of 10 September 2003. The survey of each pond was conducted by yourself, me, and Juan Altamirano with the use of flashlights and headlamps from 20:15-23:00 hrs. We found many CRLFs of all life stages from juveniles to adults, as well as adult California toads (*Bufo boreas halophilus*) [=CT] and Pacific tree frogs (*Hyla regilla*) [=PT] by the use of eye shines. A single adult BF was also located. The exact counts of frogs and toads at each location are as follows:

	Totals CRLF	BF
Pond A: 1 CRLF adult, 4 CRLF juveniles.		
Pond B: 3 CRLF juveniles, 1 CT adult.	J-14	J-0
Pond C: 1 CRLF juveniles, 1 CT adult.	A-18	A-1
Pond D: 2 CRLF juveniles, 1 CT adult, 1 PT adult.	32	1
Pond E: 6 CRLF adults, 15 CRLF juveniles, 1 BF adult.		
Pond F: 4 CRLF adults.		
Pond G: 3 CRLF adults, 4 CRLF juveniles.		
Spring (=Pond): 7 CRLF adults.		

All frogs observed seemed to be in healthy condition and we noted at least 4, old, adult, female CRLFs during the survey. All frogs seemed to be present in fairly exposed conditions except for those in under the willows (*Salix* sp.) in Pond F and the rocks at the Spring (=Pond). The number of frogs in each pond could undoubtedly be increased with the addition of some pond side cover. The most interesting fact regarding the survey was the large number of CRLFs observed and the almost complete lack of BFs on site. It may be an effective control measure to just survey for BFs several times a year and remove any BF adults that are observed in the ponds. Additionally, surveys could also be conducted during the spring to remove any potential BF egg masses.

Thank you for the opportunity to be involved with this survey. Please feel free to contact me if you have any questions on this material.

Sincerely,

Mark R. Jennings
President and
Herpetologist/Fisheries Biologist

EXHIBIT D

Mattern and Associates – Drainage Analysis

INSTITUTE GOLF COURSE

MORGAN HILL

DRAINAGE ANALYSIS

SUPPLEMENTAL REPORT

FEBRUARY 2, 2004

PREPARED BY

MATTERN & ASSOCIATES
3967 S PEARDALE DR LAFAYETTE CA 94549 (925) 283-6315

SUMMARY

This report is a supplement to the drainage analysis of May 24, 2002, which was a summary of surface drainage conditions at the Institute Golf Course, Morgan Hill, California. Included in this report is additional information and revised estimates of peak storm flows for various storms for existing conditions, as well as conditions before the current facilities were constructed. It includes and supersedes recent information that was provided in several memos and other material.

While the analysis has changed, the conclusions of this report are the same as the previous report, that the predicted peak storm flows under existing site conditions are estimated to be lower than the peak flows that would have occurred with conditions before the project was constructed, and that grading changes made near the creek channel would not affect flows in the channel or flooding patterns at the site.

PREVIOUS STORM DRAIN SYSTEM

A significant comment in the DEIR for the project is that under previous conditions, site facilities included a storm drain which carried the runoff from 44 acres of the site to Corralitos Creek, while the present project allows the runoff from this area to flow to San Martin Creek, which represents a significant change in runoff conditions. As part of the additional analysis of the drainage system, a more complete review was made of the previous storm drain system on the site.

The previous storm drain system apparently consisted of an 8-inch CMP drain which extended from near the buildings on the site towards the northwest into Corralitos Creek. The downstream section of this drain (about 300 feet) is still in place, and was incorporated into the existing storm drain system on the site. The upstream portion of this drain was removed or was covered as part of the construction that occurred.

The elevation or slope of the previous drain was not determined during our review, but the slope was estimated to be less than one half of one percent from the available topography. This is based on the ground elevation at the south side of the present maintenance building (about elevation 353 feet), and the invert elevation in Corralitos Creek just upstream of Foothill Road (about elevation 346 feet), which would provide a maximum drop of about 7 feet over a distance of 1700 feet, for a slope of 0.0041. The observed outlet of the pipe is several feet above the invert of the creek, so the actual slope may be less, but the elevation of the existing outlet was not obtained. In addition, with water flowing in Corralitos Creek during major storms, a water surface above the outlet of the drain would reduce the effective slope for calculating

the capacity of the storm drain. For instance, the water surface elevation with a 100-year flow is estimated to be about 350 feet in Corralitos Creek, and the maximum effective slope would then be a drop of 3 feet over the length of 1700 feet, or 0.0018.

With the slope of 0.0041, the capacity of an 8-inch CMP pipe would be about 0.42 cubic feet per second (cfs), and with a slope of 0.0018, the capacity would be about 0.27 cfs.

The estimated flows from the 44 acre drainage site were estimated to be about 14 cfs for a 2-year storm, which would be more than 30 times the estimated capacity of the previous storm drain. Topography of the site does not seem to have allowed significant storage of water in the area near the storm drain. Therefore, overflows from this storm drain probably occurred during many of the significant storms which occurred. Because the ground west of the buildings sloped towards the west and south, not towards Corralitos Creek, it is expected that these overflows eventually reached San Martin Creek, rather than Corralitos Creek.

The hydrology analysis was revised in order to better estimate the actual effect of the previous storm drain on flows in the watershed. Flows up to the capacity of the storm drain were diverted to Corralitos Creek, and the remaining flows (the estimated overflows) were added to flows in San Martin Creek. In order to provide a conservative comparison of flows on the site, the analysis used a storm drain capacity of 1 cfs, which was larger than the expected actual capacity of the storm drain. Therefore, the actual flows in the San Martin Creek area might have been slightly larger than what the analysis estimated, and the flows in Corralitos Creek might have been slightly smaller.

REVISED STORM FLOW ESTIMATES

In addition to the changes made with regard to the previous storm drain system, a number of changes were made to the drainage hydrology analysis of the existing drainage system, based on comments in the revised DEIR, and review of information about the project site.

One valid comment in the revised DEIR was that if Lake G is not lowered during the winter, it could overflow into Corralitos Creek. The model was revised to include flows from Lake G, assuming that the lake is full at the start of the storm.

Based on this evaluation, if the pond is not lowered during the winter, and is full at the start of a storm, it is estimated that the peak flow in Corralitos Creek would be increased by less than 0.5 cfs, out of a total flow of 460 cfs (100-year flow). It is not expected that this change in flow would change the conclusions of the drainage

analysis with regard to flooding on the site from Corralitos Creek, which is that no additional flooding would occur. It should not be necessary to keep Pond G low during the winter to prevent overflows.

Another valid comment in the revised DEIR was in regards to the lakes which existed on the site before the present project, and the detention effect these lakes would have had on storm flows.

The currently available information about these lakes was the 1994 aerial photo enlargement, and the preproject topography shown on the drainage plan dated June 23, 1977.

The previous lakes covered an area of about 2.2 acres. The upper (North Lake) appeared to drain into the middle lake through an unregulated channel, and the Middle Lake drained into the lower (South Lake), also through an unregulated channel. The south lake appeared to drain towards the west, through a culvert and open ditch, into the ditch along the east side of Foothill Road. Based on the preproject topography, the ground between the lakes and Foothill Road was only slightly above the level of the lakes, and a rise in water surface of roughly one foot may have caused overflows to Foothill Road.

The area outside the project to the east of the site appeared to drain directly to Foothill Road, without entering the lakes. Likewise, the area north of the previous golf course (north of the existing entrance road) also appeared to drain directly to Foothill Road. The drainage area of the previous lakes was therefore estimated to be most of the former golf course area, and some local area towards the east, for a total area of about 43 acres.

By incorporating the former lakes and their assumed characteristics into the hydrology model, an estimate was made of the effect of these lakes on the peak storm flows. With the storage effect of the lakes, the preproject flows were lower than previously estimated.

Another comment in the revised DEIR was in regards to the effect of Pond D and Pond E on the flow into San Martin Creek. For the original analysis, these lakes were assumed to be kept low during the winter, and not flow into San Martin Creek.

While it is still expected that these lakes would be kept low, and not contribute to peak flows, the analysis was revised to include a worst case scenario, where the drainage to these lakes would contribute to peak flow in San Martin Creek. In the revised analysis, the flow into Lake E was assumed to flow into Lake D through the existing connecting pipe (which is normally kept closed), and Lake D would overflow

through the outlet pipe to Foothill Road. Both lakes were assumed to be full at the start of storms.

Some differences to the analysis were made as a result of a review of the as built drainage plan dated 8-14-03, as compared with the 1997 drainage plan that was used for the analysis in the original report. These changes included a revision of the drainage area of Lake E, changing some drainage area from Lake C to Lake A, the inclusion of Lake B, and a revision of the storage characteristics and the overflow elevation of Lake A.

With the previous drainage plan, the elevation of Lake A was shown as 325 feet, and the elevation at which water would overflow from the lake was estimated to be about 328 feet. With the revised as built plan, the elevation of the lake outlet is shown as 324.4 feet, and overflows from the lake would occur at about 331 feet.

In addition, the as built plan shows all drainage from east of Lake A flowing into the lake. The previous plan seemed to indicate that an 18-inch pipe carried flows along the southern edge of the property directly to Foothill Road, with possible overflows into Lake A. The analysis was revised to include all drainage from the southern part of the property flowing into Lake A, with no direct outflow to Foothill Road.

ANALYSIS RESULTS

The results of the hydrology modeling are summarized in Table 1 for existing condition flows, and in Table 2 for the previous condition flows. The hydrologic model summary output for the existing condition flow is shown in Appendix A, and the summary for the previous condition flow is shown in Appendix B.

The estimated results show that the peak flow in Corralitos Creek would be slightly lower than under previous conditions (about 1% reduction), and that the flows in San Martin Creek would have a significant reduction with existing conditions, ranging from more than 40% reduction for the 2-year storm, to more than 20% reduction for the 100-year storm.

Table 3 shows the estimated retention volume provided by the various lakes in the existing project for the various frequency storms analyzed. The volume shown is only that obtained through surcharge of the lake above the elevation of the normal lake outlet, and does not include any volume due to drawdown of the lake before the storms.

With the various changes in the hydrology model, the results show that existing condition flows are lower than the estimated previous condition flows, indicating that the existing drainage system does not worsen downstream drainage conditions, and

provides a benefit in reducing peak flows below what would have occurred with the previous drainage system.

CHANGES NOT INCLUDED IN ANALYSIS

Some factors that would affect the runoff from the site under existing conditions were identified, but were not included in the model used for the analysis.

It was pointed out that the present project included the removal of some of the roads and paved parking areas which were previously located on the site. The removal of this impervious area by itself would have caused the runoff under existing conditions to be lower than under previous conditions.

At the present time, we have not estimated the change in paved area, or the resulting change in runoff conditions. Therefore, the estimate of peak flows under existing conditions from the analysis shown here may be somewhat higher than what would actually occur.

Table 1
Estimated Existing Condition Peak Flows

February 2, 2004

Watershed	Drainage Area (acres)	Peak Flow					
		2-year (cfs)	5-year (cfs)	10-year (cfs)	25-year (cfs)	50-year (cfs)	100-year (cfs)
Corralitos Creek							
CA	213.6	45	69	86	105	120	134
CB	62.6	18	27	33	40	45	50
CC upper	97.3	22	34	41	51	58	65
CC lower	290	64	96	117	143	162	180
CC total	387.3	83	127	156	191	216	241
Project Site	64.1	17	25	30	36	41	46
Total Corralitos Creek	727.6	160	244	300	368	417	465
San Martin Creek							
Lake E	12.3	1.8	2.8	3.0	3.2	3.4	3.5
Lake D	6.9	2.4	3.6	4.3	4.9	5.4	5.9
Lake C	30.7	8	13	16	19	22	24
SA	14.2	5	7	9	11	12	14
SB	34.2	11	16	19	23	26	29
Lake A	68.6	21	34	48	65	81	94
Total San Martin Creek	166.9	24	37	52	70	86	99

Table 2
Estimated Previous Condition Peak Flows

January 31, 2004

Watershed	Drainage Area (acres)	Peak Flow					
		2-year (cfs)	5-year (cfs)	10-year (cfs)	25-year (cfs)	50-year (cfs)	100-year (cfs)
Corralitos Creek							
CA	213.6	45	69	86	105	120	134
CB	62.6	18	27	33	40	45	50
CC upper	97.3	22	34	41	51	58	65
CC lower	290	64	96	117	143	162	180
CC total	387.3	83	127	156	191	216	241
Project Site	64.1	18	27	33	40	45	50
SA	14.2	5	7	9	11	12	14
Project site storm drain	29.8	1	1	1	1	1	1
Total Corralitos Creek[1]	771.6	162	248	304	372	422	471
San Martin Creek							
Storm drain overflow		14	20	25	30	34	38
Lakes	43.9	11	17	21	26	30	34
SB	34.2	11	16	19	23	26	29
Project Site	44.8	12	18	22	27	30	34
Total San Martin Creek	122.9	40	64	79	98	112	126

[1]Assumes site storm drain had maximum capacity of 1 cfs, and excess flow went to San Martin Creek watershed.

Table 3
Maximum Existing Lake Detention Storage

	Storm Frequency Maximum Storm Volume Storage (acre-feet)					
Location	2-yr	5-yr	10-yr	25-yr	50-yr	100-yr
Lake A	4.9	7.6	9.0	10.1	10.7	11.2
Lake B	0.4	0.4	0.5	0.5	0.5	0.5
Lake C	0.7	0.8	0.8	0.9	0.9	1.0
Lake D	0.5	0.7	0.8	0.9	1.0	1.1
Lake E	0.5	0.7	0.9	1.2	1.5	1.7
Lake G	0.6	0.9	1.1	1.3	1.5	1.7
Total	7.4	11.1	13.0	15.0	16.1	17.2

Storage volume shown is that above elevation of normal outlet.

APPENDIX A

SUMMARY OF HYDROLOGIC MODEL COMPUTATIONS

EXISTING CONDITIONS

FILE IGCJ.DAT (FLOWS ARE 100 TIMES ACTUAL FLOWS)

FLOW IN CUBIC FEET PER SECOND
TIME IN HOURS, AREA IN SQUARE MILES

	OPERATION	STATION	PEAK FLOW	TIME OF PEAK	AVERAGE FLOW FOR MAXIMUM PERIOD 6-HOUR	24-HOUR	72-HOUR	BASIN AREA	MAXIMUM STAGE	TIME OF MAX STAGE
	HYDROGRAPH AT									
+		WA02	4506.	5.07	2473.	1798.	1798.	33.40		
	HYDROGRAPH AT									
+		WB02	1840.	4.83	947.	689.	689.	9.80		
	HYDROGRAPH AT									
+		LKG02	293.	4.63	126.	92.	92.	1.20		
	ROUTED TO									
+		LKGSRT	30.	8.30	15.	11.	11.	1.20		
+									378.32	8.30
	HYDROGRAPH AT									
+		WCU02	2536.	4.97	1392.	1011.	1011.	15.20		
	ROUTED TO									
+		WCUSRT	2203.	5.87	1197.	866.	866.	15.20		
+									1000.30	5.87
	ROUTED TO									
+		WCUCRT	2202.	5.90	1193.	863.	863.	15.20		
	HYDROGRAPH AT									
+		WCL02	6357.	5.10	3736.	2714.	2714.	45.30		
	2 COMBINED AT									
+		WC02	8314.	5.50	4929.	3577.	3577.	60.50		
	4 COMBINED AT									
+		COR02	14403.	5.17	8364.	6074.	6074.	104.90		
	HYDROGRAPH AT									
+		PSC02	1631.	4.87	846.	615.	615.	8.77		
	2 COMBINED AT									
+		CORT02	15947.	5.13	9210.	6689.	6689.	113.67		
	HYDROGRAPH AT									
+		LKE02	396.	4.77	194.	141.	141.	1.92		
	ROUTED TO									
+		LKESRT	182.	7.23	103.	75.	75.	1.92		
+									353.56	7.23
	HYDROGRAPH AT									
+		LKD02	260.	4.63	113.	82.	82.	1.08		
	2 COMBINED AT									
+		LKDTOT02	332.	4.70	216.	157.	157.	3.00		
	ROUTED TO									
+		LKDSRT	239.	8.13	126.	91.	91.	3.00		

+								344.28	8.10
	HYDROGRAPH AT								
+		WLKC02	930.	4.83	472.	343.	343.	4.80	
	ROUTED TO								
+		LKCSRT	781.	5.57	355.	257.	257.	4.80	
+								345.22	5.57
	ROUTED TO								
+		LKBSRT	751.	5.90	284.	206.	206.	4.80	
+								344.07	5.90
	HYDROGRAPH AT								
+		WD02	512.	4.67	228.	166.	166.	2.20	
	HYDROGRAPH AT								
+		WLKA02	1361.	4.80	681.	495.	495.	6.90	
	HYDROGRAPH AT								
+		WE02	1067.	4.80	528.	384.	384.	5.30	
	HYDROGRAPH AT								
+		PSE02	795.	4.77	384.	279.	279.	3.80	
	2 COMBINED AT								
+		WET02	1861.	4.77	911.	662.	662.	9.10	
	4 COMBINED AT								
+		LKAT02	3783.	4.77	2105.	1529.	1529.	23.00	
	ROUTED TO								
+		LKASRT	2140.	7.33	1175.	851.	851.	23.00	
+								327.75	7.33
	2 COMBINED AT								
+		SANMAR02	2373.	7.40	1301.	942.	942.	26.00	
	HYDROGRAPH AT								
+		WA05	6947.	5.03	4053.	2944.	2944.	33.40	
	HYDROGRAPH AT								
+		WB05	2724.	4.83	1478.	1074.	1074.	9.80	
	HYDROGRAPH AT								
+		LKG05	426.	4.63	196.	142.	142.	1.20	
	ROUTED TO								
+		LKGSRT	47.	8.30	24.	18.	18.	1.20	
+								378.49	8.30
	HYDROGRAPH AT								
+		WCU05	3785.	4.97	2180.	1583.	1583.	15.20	
	ROUTED TO								
+		WCUSRT	3370.	5.67	1932.	1398.	1398.	15.20	
+								1000.40	5.67
	ROUTED TO								
+		WCUCRT	3370.	5.70	1927.	1394.	1394.	15.20	

	HYDROGRAPH AT								
+		WCL05	9591.	5.10	5902.	4286.	4286.	45.30	
	2 COMBINED AT								
+		WC05	12660.	5.30	7829.	5680.	5680.	60.50	
	4 COMBINED AT								
+		COR05	22110.	5.10	13384.	9716.	9716.	104.90	
	HYDROGRAPH AT								
+		PSC05	2416.	4.87	1320.	959.	959.	8.77	
	2 COMBINED AT								
+		CORT05	24415.	5.07	14704.	10675.	10675.	113.67	
	HYDROGRAPH AT								
+		LKE05	582.	4.77	301.	219.	219.	1.92	
	ROUTED TO								
+		LKESRT	275.	7.10	165.	119.	119.	1.92	
+								353.95	7.10
	HYDROGRAPH AT								
+		LKD05	378.	4.63	176.	128.	128.	1.08	
	2 COMBINED AT								
+		LKDTOT05	506.	4.70	340.	247.	247.	3.00	
	ROUTED TO								
+		LKDSRT	364.	8.07	203.	147.	147.	3.00	
+								344.43	8.07
	HYDROGRAPH AT								
+		WLKC05	1375.	4.83	736.	535.	535.	4.80	
	ROUTED TO								
+		LKCSRT	1271.	5.17	613.	444.	444.	4.80	
+								345.40	5.17
	ROUTED TO								
+		LKBSRT	1251.	5.33	540.	390.	390.	4.80	
+								344.13	5.33
	HYDROGRAPH AT								
+		WD05	746.	4.67	355.	258.	258.	2.20	
	HYDROGRAPH AT								
+		WLKA05	2008.	4.80	1061.	771.	771.	6.90	
	HYDROGRAPH AT								
+		WE05	1572.	4.80	821.	597.	597.	5.30	
	HYDROGRAPH AT								
+		PSE05	1168.	4.77	597.	434.	434.	3.80	
	2 COMBINED AT								
+		WET05	2739.	4.77	1418.	1031.	1031.	9.10	
	4 COMBINED AT								

+		LKAT05	6146.	5.03	3373.	2450.	2450.	23.00	
	ROUTED TO								
+		LKASRT	3346.	7.13	1943.	1407.	1407.	23.00	
+									329.64 7.13
	2 COMBINED AT								
+		SANMAR05	3698.	7.20	2146.	1554.	1554.	26.00	
	HYDROGRAPH AT								
+		WA10	8554.	5.03	5115.	3720.	3720.	33.40	
	HYDROGRAPH AT								
+		WB10	3302.	4.83	1828.	1331.	1331.	9.80	
	HYDROGRAPH AT								
+		LKG10	513.	4.63	241.	176.	176.	1.20	
	ROUTED TO								
+		LKGSRT	57.	8.30	31.	22.	22.	1.20	
+									378.61 8.30
	HYDROGRAPH AT								
+		WCU10	4600.	4.97	2701.	1965.	1965.	15.20	
	ROUTED TO								
+		WCUSRT	4145.	5.60	2425.	1754.	1754.	15.20	
+									1000.46 5.60
	ROUTED TO								
+		WCUCRT	4145.	5.60	2420.	1751.	1751.	15.20	
	HYDROGRAPH AT								
+		WCL10	11695.	5.07	7340.	5336.	5336.	45.30	
	2 COMBINED AT								
+		WC10	15557.	5.20	9760.	7087.	7087.	60.50	
	4 COMBINED AT								
+		COR10	27179.	5.10	16734.	12160.	12160.	104.90	
	HYDROGRAPH AT								
+		PSC10	2929.	4.87	1632.	1189.	1189.	8.77	
	2 COMBINED AT								
+		CORT10	29976.	5.07	18367.	13349.	13349.	113.67	
	HYDROGRAPH AT								
+		LKE10	704.	4.77	372.	271.	271.	1.92	
	ROUTED TO								
+		LKESRT	299.	7.47	193.	140.	140.	1.92	
+									354.11 7.47
	HYDROGRAPH AT								
+		LKD10	456.	4.63	216.	158.	158.	1.08	
	2 COMBINED AT								
+		LKDTOT10	620.	4.70	409.	298.	298.	3.00	

	ROUTED TO								
+		LKDSRT	426.	7.87	249.	181.	181.	3.00	
+								344.50	7.87
	HYDROGRAPH AT								
+		WLKC10	1665.	4.83	910.	662.	662.	4.80	
	ROUTED TO								
+		LKCSRT	1566.	5.10	785.	569.	569.	4.80	
+								345.51	5.10
	ROUTED TO								
+		LKBSRT	1550.	5.23	710.	514.	514.	4.80	
+								344.17	5.23
	HYDROGRAPH AT								
+		WD10	900.	4.67	437.	319.	319.	2.20	
	HYDROGRAPH AT								
+		WLKA10	2431.	4.80	1311.	955.	955.	6.90	
	HYDROGRAPH AT								
+		WE10	1902.	4.80	1015.	739.	739.	5.30	
	HYDROGRAPH AT								
+		PSE10	1413.	4.77	736.	537.	537.	3.80	
	2 COMBINED AT								
+		WET10	3314.	4.77	1751.	1276.	1276.	9.10	
	4 COMBINED AT								
+		LKAT10	7840.	4.87	4209.	3064.	3064.	23.00	
	ROUTED TO								
+		LKASRT	4769.	6.63	2595.	1879.	1879.	23.00	
+								330.41	6.63
	2 COMBINED AT								
+		SANMAR10	5173.	6.63	2844.	2060.	2060.	26.00	
	HYDROGRAPH AT								
+		WA25	10530.	5.03	6456.	4710.	4710.	33.40	
	HYDROGRAPH AT								
+		WB25	4007.	4.83	2263.	1657.	1657.	9.80	
	HYDROGRAPH AT								
+		LKG25	620.	4.63	296.	219.	219.	1.20	
	ROUTED TO								
+		LKGSRT	71.	8.30	39.	28.	28.	1.20	
+								378.75	8.30
	HYDROGRAPH AT								
+		WCU25	5595.	4.97	3353.	2449.	2449.	15.20	
	ROUTED TO								
+		WCUSRT	5086.	5.57	3050.	2208.	2208.	15.20	
+								1000.53	5.53

	ROUTED TO								
+		WCUCRT	5086.	5.57	3045.	2204.	2204.	15.20	
	HYDROGRAPH AT								
+		WCL25	14276.	5.07	9141.	6668.	6668.	45.30	
	2 COMBINED AT								
+		WC25	19066.	5.17	12186.	8872.	8872.	60.50	
	4 COMBINED AT								
+		COR25	33346.	5.10	20944.	15267.	15267.	104.90	
	HYDROGRAPH AT								
+		PSC25	3554.	4.87	2022.	1479.	1479.	8.77	
	2 COMBINED AT								
+		CORT25	36750.	5.07	22965.	16746.	16746.	113.67	
	HYDROGRAPH AT								
+		LKE25	853.	4.77	459.	337.	337.	1.92	
	ROUTED TO								
+		LKESRT	320.	7.83	218.	158.	158.	1.92	
+								354.32	7.83
	HYDROGRAPH AT								
+		LKD25	552.	4.63	266.	196.	196.	1.08	
	2 COMBINED AT								
+		LKDTOT25	761.	4.70	484.	354.	354.	3.00	
	ROUTED TO								
+		LKDSRT	493.	7.63	303.	220.	220.	3.00	
+								344.58	7.60
	HYDROGRAPH AT								
+		WLKC25	2020.	4.83	1125.	824.	824.	4.80	
	ROUTED TO								
+		LKCSRT	1907.	5.07	1003.	727.	727.	4.80	
+								345.64	5.07
	ROUTED TO								
+		LKBSRT	1890.	5.20	926.	670.	670.	4.80	
+								344.22	5.20
	HYDROGRAPH AT								
+		WD25	1089.	4.67	539.	397.	397.	2.20	
	HYDROGRAPH AT								
+		WLKA25	2947.	4.80	1621.	1188.	1188.	6.90	
	HYDROGRAPH AT								
+		WE25	2305.	4.77	1255.	920.	920.	5.30	
	HYDROGRAPH AT								
+		PSE25	1710.	4.77	910.	668.	668.	3.80	
	2 COMBINED AT								
+		WET25	4016.	4.77	2164.	1587.	1587.	9.10	

	4 COMBINED AT								
+		LKAT25	9609.	4.83	5251.	3842.	3842.	23.00	
	ROUTED TO								
+		LKASRT	6542.	6.27	3554.	2574.	2574.	23.00	
+									331.01 6.27
	2 COMBINED AT								
+		SANMAR25	7004.	6.30	3857.	2794.	2794.	26.00	
	HYDROGRAPH AT								
+		WA50	11991.	5.03	7421.	5431.	5431.	33.40	
	HYDROGRAPH AT								
+		WB50	4533.	4.83	2575.	1893.	1893.	9.80	
	HYDROGRAPH AT								
+		LKG50	701.	4.63	336.	250.	250.	1.20	
	ROUTED TO								
+		LKGSRT	81.	8.30	44.	32.	32.	1.20	
+									378.86 8.30
	HYDROGRAPH AT								
+		WCU50	6333.	4.97	3819.	2799.	2799.	15.20	
	ROUTED TO								
+		WCUSRT	5790.	5.50	3506.	2539.	2539.	15.20	
+									1000.58 5.50
	ROUTED TO								
+		WCUCRT	5790.	5.50	3500.	2535.	2535.	15.20	
	HYDROGRAPH AT								
+		WCL50	16175.	5.07	10433.	7634.	7634.	45.30	
	2 COMBINED AT								
+		WC50	21643.	5.17	13933.	10169.	10169.	60.50	
	4 COMBINED AT								
+		COR50	37862.	5.10	23974.	17526.	17526.	104.90	
	HYDROGRAPH AT								
+		PSC50	4021.	4.87	2300.	1690.	1690.	8.77	
	2 COMBINED AT								
+		CORT50	41713.	5.07	26273.	19216.	19216.	113.67	
	HYDROGRAPH AT								
+		LKE50	965.	4.77	522.	385.	385.	1.92	
	ROUTED TO								
+		LKESRT	337.	8.03	234.	170.	170.	1.92	
+									354.49 8.03
	HYDROGRAPH AT								
+		LKD50	623.	4.63	302.	224.	224.	1.08	
	2 COMBINED AT								

+		LKDTOT50	866.	4.70	537.	394.	394.	3.00	
	ROUTED TO								
+		LKDSRT	541.	7.50	341.	247.	247.	3.00	
+								344.63	7.47
	HYDROGRAPH AT								
+		WLKC50	2284.	4.83	1280.	941.	941.	4.80	
	ROUTED TO								
+		LKCSRT	2156.	5.07	1160.	841.	841.	4.80	
+								345.73	5.07
	ROUTED TO								
+		LKBSRT	2137.	5.20	1083.	783.	783.	4.80	
+								344.25	5.20
	HYDROGRAPH AT								
+		WD50	1230.	4.67	611.	453.	453.	2.20	
	HYDROGRAPH AT								
+		WLKA50	3333.	4.80	1843.	1357.	1357.	6.90	
	HYDROGRAPH AT								
+		WE50	2607.	4.77	1426.	1051.	1051.	5.30	
	HYDROGRAPH AT								
+		PSE50	1934.	4.77	1034.	762.	762.	3.80	
	2 COMBINED AT								
+		WET50	4541.	4.77	2459.	1813.	1813.	9.10	
	4 COMBINED AT								
+		LKAT50	10873.	4.80	5997.	4406.	4406.	23.00	
	ROUTED TO								
+		LKASRT	8059.	6.03	4259.	3087.	3087.	23.00	
+								331.29	6.03
	2 COMBINED AT								
+		SANMAR50	8556.	6.03	4600.	3334.	3334.	26.00	
	HYDROGRAPH AT								
+		WA100	13378.	5.03	8354.	6131.	6131.	33.40	
	HYDROGRAPH AT								
+		WB100	5026.	4.83	2874.	2122.	2122.	9.80	
	HYDROGRAPH AT								
+		LKG100	776.	4.63	375.	280.	280.	1.20	
	ROUTED TO								
+		LKGSRT	91.	8.30	50.	36.	36.	1.20	
+								378.96	8.30
	HYDROGRAPH AT								
+		WCU100	7030.	4.97	4268.	3139.	3139.	15.20	
	ROUTED TO								
+		WCUSRT	6468.	5.47	3948.	2861.	2861.	15.20	

+								1000.62	5.47
	ROUTED TO								
+		WCUCRT	6467.	5.47	3942.	2856.	2856.	15.20	
	HYDROGRAPH AT								
+		WCL100	17980.	5.07	11677.	8569.	8569.	45.30	
	2 COMBINED AT								
+		WC100	24143.	5.17	15619.	11426.	11426.	60.50	
	4 COMBINED AT								
+		COR100	42230.	5.07	26897.	19715.	19715.	104.90	
	HYDROGRAPH AT								
+		PSC100	4459.	4.87	2568.	1894.	1894.	8.77	
	2 COMBINED AT								
+		CORT100	46505.	5.07	29465.	21609.	21609.	113.67	
	HYDROGRAPH AT								
+		LKE100	1069.	4.77	582.	431.	431.	1.92	
	ROUTED TO								
+		LKESRT	353.	8.23	249.	181.	181.	1.92	
+								354.65	8.23
	HYDROGRAPH AT								
+		LKD100	690.	4.63	337.	251.	251.	1.08	
	2 COMBINED AT								
+		LKDTOT00	964.	4.70	586.	432.	432.	3.00	
	ROUTED TO								
+		LKDSRT	587.	7.40	376.	273.	273.	3.00	
+								344.69	7.40
	HYDROGRAPH AT								
+		WLKC100	2533.	4.83	1428.	1055.	1055.	4.80	
	ROUTED TO								
+		LKCSRT	2392.	5.07	1312.	952.	952.	4.80	
+								345.82	5.07
	ROUTED TO								
+		LKBSRT	2371.	5.20	1234.	893.	893.	4.80	
+								344.28	5.20
	HYDROGRAPH AT								
+		WD100	1362.	4.67	681.	507.	507.	2.20	
	HYDROGRAPH AT								
+		WLKA100	3694.	4.80	2057.	1521.	1521.	6.90	
	HYDROGRAPH AT								
+		WE100	2890.	4.77	1591.	1177.	1177.	5.30	
	HYDROGRAPH AT								
+		PSE100	2143.	4.73	1153.	854.	854.	3.80	

	2 COMBINED AT								
+		WET100	5032.	4.77	2744.	2031.	2031.	9.10	
	4 COMBINED AT								
+		LKAT100	12057.	4.80	6716.	4952.	4952.	23.00	
	ROUTED TO								
+		LKASRT	9394.	5.87	4948.	3588.	3588.	23.00	
+									331.54 5.87
	2 COMBINED AT								
+		SANMAR00	9926.	5.90	5325.	3861.	3861.	26.00	

APPENDIX B

SUMMARY OF HYDROLOGIC MODEL COMPUTATIONS

PREVIOUS CONDITIONS

FILE IGCT.DAT (FLOWS ARE 100 TIMES ACTUAL FLOWS)

FLOW IN CUBIC FEET PER SECOND
TIME IN HOURS, AREA IN SQUARE MILES

	OPERATION	STATION	PEAK FLOW	TIME OF PEAK	AVERAGE FLOW FOR MAXIMUM PERIOD 6-HOUR	24-HOUR	72-HOUR	BASIN AREA	MAXIMUM STAGE	TIME OF MAX STAGE
	HYDROGRAPH AT									
+		WD02	512.	4.67	228.	166.	166.	2.20		
	HYDROGRAPH AT									
+		PSD02	957.	4.77	467.	340.	340.	4.66		
	2 COMBINED AT									
+		PSDT02	1461.	4.73	696.	506.	506.	6.86		
	DIVERSION TO									
+		STRMDR02	100.	4.73	92.	70.	70.	6.86		
	HYDROGRAPH AT									
+		STORMDR	1361.	4.73	603.	436.	436.	6.86		
	HYDROGRAPH AT									
+		WLK02	1421.	4.77	690.	502.	502.	6.90		
	ROUTED TO									
+		WNLKSRT	1271.	5.13	647.	468.	468.	6.90		
+									338.62	5.13
	ROUTED TO									
+		WMLKSRT	1112.	5.90	560.	405.	405.	6.90		
+									336.57	5.90
	ROUTED TO									
+		WSLKSRT	1109.	5.97	491.	355.	355.	6.90		
+									331.15	5.97
	HYDROGRAPH AT									
+		WE02	1067.	4.80	528.	384.	384.	5.30		
	HYDROGRAPH AT									
+		PSE02	1216.	4.97	658.	478.	478.	7.00		
	4 COMBINED AT									
+		SANMAR02	4038.	5.50	2279.	1652.	1652.	26.06		
	HYDROGRAPH AT									
+		WA02	4506.	5.07	2473.	1798.	1798.	33.40		
	HYDROGRAPH AT									
+		WB02	1840.	4.83	947.	689.	689.	9.80		
	HYDROGRAPH AT									
+		WCU02	2536.	4.97	1392.	1011.	1011.	15.20		
	ROUTED TO									
+		WCUSRT	2203.	5.87	1197.	866.	866.	15.20		
+									1000.30	5.87
	ROUTED TO									

+		WCUCRT	2202.	5.90	1193.	863.	863.	15.20	
	HYDROGRAPH AT								
+		WCL02	6357.	5.10	3736.	2714.	2714.	45.30	
	2 COMBINED AT								
+		WC02	8314.	5.50	4929.	3577.	3577.	60.50	
	3 COMBINED AT								
+		COR02	14388.	5.13	8349.	6063.	6063.	103.70	
	HYDROGRAPH AT								
+		PSC02	1810.	4.90	953.	693.	693.	10.00	
	2 COMBINED AT								
+		CORT02	16120.	5.13	9303.	6756.	6756.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	3.03	92.	70.	70.	.00	
	2 COMBINED AT								
+		CORTT02	16220.	5.13	9395.	6826.	6826.	113.70	
	HYDROGRAPH AT								
+		WD05	746.	4.67	355.	258.	258.	2.20	
	HYDROGRAPH AT								
+		PSD05	1408.	4.77	727.	528.	528.	4.66	
	2 COMBINED AT								
+		PSDT05	2143.	4.73	1082.	786.	786.	6.86	
	DIVERSION TO								
+		STRMDR05	100.	4.73	100.	77.	77.	6.86	
	HYDROGRAPH AT								
+		STORMDR	2043.	4.73	982.	710.	710.	6.86	
	HYDROGRAPH AT								
+		WLK05	2089.	4.77	1074.	781.	781.	6.90	
	ROUTED TO								
+		WNLKSRT	1915.	5.07	1020.	738.	738.	6.90	
+									338.82 5.07
	ROUTED TO								
+		WMLKSRT	1716.	5.67	909.	657.	657.	6.90	
+									336.76 5.67
	ROUTED TO								
+		WSLKSRT	1712.	5.73	837.	605.	605.	6.90	
+									331.28 5.73
	HYDROGRAPH AT								
+		WE05	1572.	4.80	821.	597.	597.	5.30	
	HYDROGRAPH AT								
+		PSE05	1810.	4.97	1027.	746.	746.	7.00	
	4 COMBINED AT								

+		SANMAR05	6416.	5.00	3667.	2658.	2658.	26.06	
	HYDROGRAPH AT								
+		WA05	6947.	5.03	4053.	2944.	2944.	33.40	
	HYDROGRAPH AT								
+		WB05	2724.	4.83	1478.	1074.	1074.	9.80	
	HYDROGRAPH AT								
+		WCU05	3785.	4.97	2180.	1583.	1583.	15.20	
	ROUTED TO								
+		WCUSRT	3370.	5.67	1932.	1398.	1398.	15.20	
+								1000.40	5.67
	ROUTED TO								
+		WCUCRT	3370.	5.70	1927.	1394.	1394.	15.20	
	HYDROGRAPH AT								
+		WCL05	9591.	5.10	5902.	4286.	4286.	45.30	
	2 COMBINED AT								
+		WC05	12660.	5.30	7829.	5680.	5680.	60.50	
	3 COMBINED AT								
+		COR05	22086.	5.10	13360.	9698.	9698.	103.70	
	HYDROGRAPH AT								
+		PSC05	2686.	4.87	1489.	1082.	1082.	10.00	
	2 COMBINED AT								
+		CORT05	24675.	5.07	14848.	10780.	10780.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	2.40	100.	77.	77.	.00	
	2 COMBINED AT								
+		CORTT05	24775.	5.07	14948.	10856.	10856.	113.70	
	HYDROGRAPH AT								
+		WD10	900.	4.67	437.	319.	319.	2.20	
	HYDROGRAPH AT								
+		PSD10	1704.	4.77	898.	654.	654.	4.66	
	2 COMBINED AT								
+		PSDT10	2591.	4.73	1335.	974.	974.	6.86	
	DIVERSION TO								
+		STRMDR10	100.	4.73	100.	80.	80.	6.86	
	HYDROGRAPH AT								
+		STORMDR	2491.	4.73	1235.	894.	894.	6.86	
	HYDROGRAPH AT								
+		WLK10	2527.	4.77	1326.	967.	967.	6.90	
	ROUTED TO								
+		WNLKSRT	2337.	5.03	1269.	919.	919.	6.90	
+								338.93	5.03

	ROUTED TO								
+		WMLKSRT	2114.	5.57	1146.	829.	829.	6.90	
+								336.87	5.57
	ROUTED TO								
+		WSLKSRT	2108.	5.67	1071.	774.	774.	6.90	
+								331.36	5.67
	HYDROGRAPH AT								
+		WE10	1902.	4.80	1015.	739.	739.	5.30	
	HYDROGRAPH AT								
+		PSE10	2198.	4.97	1272.	925.	925.	7.00	
	4 COMBINED AT								
+		SANMAR10	7931.	4.97	4593.	3333.	3333.	26.06	
	HYDROGRAPH AT								
+		WA10	8554.	5.03	5115.	3720.	3720.	33.40	
	HYDROGRAPH AT								
+		WB10	3302.	4.83	1828.	1331.	1331.	9.80	
	HYDROGRAPH AT								
+		WCU10	4600.	4.97	2701.	1965.	1965.	15.20	
	ROUTED TO								
+		WCUSRT	4145.	5.60	2425.	1754.	1754.	15.20	
+								1000.46	5.60
	ROUTED TO								
+		WCUCRT	4145.	5.60	2420.	1751.	1751.	15.20	
	HYDROGRAPH AT								
+		WCL10	11695.	5.07	7340.	5336.	5336.	45.30	
	2 COMBINED AT								
+		WC10	15557.	5.20	9760.	7087.	7087.	60.50	
	3 COMBINED AT								
+		COR10	27149.	5.10	16704.	12138.	12138.	103.70	
	HYDROGRAPH AT								
+		PSC10	3259.	4.87	1842.	1341.	1341.	10.00	
	2 COMBINED AT								
+		CORT10	30292.	5.07	18546.	13479.	13479.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	2.13	100.	80.	80.	.00	
	2 COMBINED AT								
+		CORTT10	30392.	5.07	18646.	13559.	13559.	113.70	
	HYDROGRAPH AT								
+		WD25	1089.	4.67	539.	397.	397.	2.20	
	HYDROGRAPH AT								
+		PSD25	2064.	4.77	1109.	814.	814.	4.66	

	2 COMBINED AT								
+		PSDT25	3137.	4.73	1648.	1211.	1211.	6.86	
	DIVERSION TO								
+		STRMDR25	100.	4.73	100.	82.	82.	6.86	
	HYDROGRAPH AT								
+		STORMDR	3037.	4.73	1548.	1128.	1128.	6.86	
	HYDROGRAPH AT								
+		WLK25	3060.	4.77	1639.	1203.	1203.	6.90	
	ROUTED TO								
+		WNLKSRT	2884.	4.97	1583.	1148.	1148.	6.90	
+									339.05 4.97
	ROUTED TO								
+		WMLKSRT	2601.	5.50	1448.	1047.	1047.	6.90	
+									337.00 5.50
	ROUTED TO								
+		WSLKSRT	2594.	5.60	1370.	990.	990.	6.90	
+									331.47 5.57
	HYDROGRAPH AT								
+		WE25	2305.	4.77	1255.	920.	920.	5.30	
	HYDROGRAPH AT								
+		PSE25	2672.	4.97	1578.	1152.	1152.	7.00	
	4 COMBINED AT								
+		SANMAR25	9768.	4.97	5750.	4190.	4190.	26.06	
	HYDROGRAPH AT								
+		WA25	10530.	5.03	6456.	4710.	4710.	33.40	
	HYDROGRAPH AT								
+		WB25	4007.	4.83	2263.	1657.	1657.	9.80	
	HYDROGRAPH AT								
+		WCU25	5595.	4.97	3353.	2449.	2449.	15.20	
	ROUTED TO								
+		WCUSRT	5086.	5.57	3050.	2208.	2208.	15.20	
+									1000.53 5.53
	ROUTED TO								
+		WCUCRT	5086.	5.57	3045.	2204.	2204.	15.20	
	HYDROGRAPH AT								
+		WCL25	14276.	5.07	9141.	6668.	6668.	45.30	
	2 COMBINED AT								
+		WC25	19066.	5.17	12186.	8872.	8872.	60.50	
	3 COMBINED AT								
+		COR25	33307.	5.10	20905.	15239.	15239.	103.70	
	HYDROGRAPH AT								

+		WCUSRT	5790.	5.50	3506.	2539.	2539.	15.20	
+								1000.58	5.50
	ROUTED TO								
+		WCUCRT	5790.	5.50	3500.	2535.	2535.	15.20	
	HYDROGRAPH AT								
+		WCL50	16175.	5.07	10433.	7634.	7634.	45.30	
	2 COMBINED AT								
+		WC50	21643.	5.17	13933.	10169.	10169.	60.50	
	3 COMBINED AT								
+		COR50	37817.	5.10	23929.	17494.	17494.	103.70	
	HYDROGRAPH AT								
+		PSC50	4478.	4.87	2597.	1908.	1908.	10.00	
	2 COMBINED AT								
+		CORT50	42147.	5.07	26526.	19401.	19401.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	1.70	100.	84.	84.	.00	
	2 COMBINED AT								
+		CORTT50	42247.	5.07	26626.	19485.	19485.	113.70	
	HYDROGRAPH AT								
+		WD100	1362.	4.67	681.	507.	507.	2.20	
	HYDROGRAPH AT								
+		PSD100	2586.	4.77	1407.	1041.	1041.	4.66	
	2 COMBINED AT								
+		PSDT100	3928.	4.73	2088.	1548.	1548.	6.86	
	DIVERSION TO								
+		STRMDR00	100.	4.73	100.	85.	85.	6.86	
	HYDROGRAPH AT								
+		STORMDR	3828.	4.73	1988.	1463.	1463.	6.86	
	HYDROGRAPH AT								
+		WLK100	3834.	4.77	2077.	1539.	1539.	6.90	
	ROUTED TO								
+		WNLKSRT	3706.	4.90	2025.	1475.	1475.	6.90	
+								339.18	4.90
	ROUTED TO								
+		WMLKSRT	3425.	5.23	1877.	1358.	1358.	6.90	
+								337.14	5.23
	ROUTED TO								
+		WSLKSRT	3404.	5.37	1796.	1298.	1298.	6.90	
+								331.64	5.37
	HYDROGRAPH AT								
+		WE100	2890.	4.77	1591.	1177.	1177.	5.30	

+		PSC25	3958.	4.87	2282.	1669.	1669.	10.00	
	2 COMBINED AT								
+		CORT25	37134.	5.07	23188.	16908.	16908.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	1.87	100.	82.	82.	.00	
	2 COMBINED AT								
+		CORTT25	37234.	5.07	23288.	16991.	16991.	113.70	
	HYDROGRAPH AT								
+		WD50	1230.	4.67	611.	453.	453.	2.20	
	HYDROGRAPH AT								
+		PSD50	2334.	4.77	1261.	929.	929.	4.66	
	2 COMBINED AT								
+		PSDT50	3546.	4.73	1872.	1382.	1382.	6.86	
	DIVERSION TO								
+		STRMDR50	100.	4.73	100.	84.	84.	6.86	
	HYDROGRAPH AT								
+		STORMDR	3446.	4.73	1772.	1298.	1298.	6.86	
	HYDROGRAPH AT								
+		WLK50	3460.	4.77	1862.	1373.	1373.	6.90	
	ROUTED TO								
+		WNLKSRT	3313.	4.93	1808.	1314.	1314.	6.90	
+								339.12	4.93
	ROUTED TO								
+		WMLKSRT	3020.	5.33	1666.	1204.	1204.	6.90	
+								337.08	5.33
	ROUTED TO								
+		WSLKSRT	3004.	5.43	1586.	1146.	1146.	6.90	
+								331.55	5.43
	HYDROGRAPH AT								
+		WE50	2607.	4.77	1426.	1051.	1051.	5.30	
	HYDROGRAPH AT								
+		PSE50	3024.	4.93	1796.	1317.	1317.	7.00	
	4 COMBINED AT								
+		SANMAR50	11153.	4.97	6580.	4812.	4812.	26.06	
	HYDROGRAPH AT								
+		WA50	11991.	5.03	7421.	5431.	5431.	33.40	
	HYDROGRAPH AT								
+		WB50	4533.	4.83	2575.	1893.	1893.	9.80	
	HYDROGRAPH AT								
+		WCU50	6333.	4.97	3819.	2799.	2799.	15.20	
	ROUTED TO								

	HYDROGRAPH AT								
+		PSE100	3356.	4.93	2007.	1476.	1476.	7.00	
	4 COMBINED AT								
+		SANMAR00	12555.	5.00	7382.	5415.	5415.	26.06	
	HYDROGRAPH AT								
+		WA100	13378.	5.03	8354.	6131.	6131.	33.40	
	HYDROGRAPH AT								
+		WB100	5026.	4.83	2874.	2122.	2122.	9.80	
	HYDROGRAPH AT								
+		WCU100	7030.	4.97	4268.	3139.	3139.	15.20	
	ROUTED TO								
+		WCUSRT	6468.	5.47	3948.	2861.	2861.	15.20	
+									1000.62 5.47
	ROUTED TO								
+		WCUCRT	6467.	5.47	3942.	2856.	2856.	15.20	
	HYDROGRAPH AT								
+		WCL100	17980.	5.07	11677.	8569.	8569.	45.30	
	2 COMBINED AT								
+		WC100	24143.	5.17	15619.	11426.	11426.	60.50	
	3 COMBINED AT								
+		COR100	42181.	5.07	26847.	19678.	19678.	103.70	
	HYDROGRAPH AT								
+		PSC100	4968.	4.87	2901.	2138.	2138.	10.00	
	2 COMBINED AT								
+		CORT100	46986.	5.07	29748.	21817.	21817.	113.70	
	HYDROGRAPH AT								
+		STDROUT	100.	1.60	100.	85.	85.	.00	
	2 COMBINED AT								
+		CORTT100	47086.	5.07	29848.	21902.	21902.	113.70	

EXHIBIT E

Correspondence with the USFWS

THE INSTITUTE
14830 Foothill Avenue
Morgan Hill, CA 95037

January 28, 2004

Mr. Dan Buford, Branch Chief
Coast, Bay, Delta Branch
U.S. Fish and Wildlife Service
2800 Cottage Way, Rm. W-2605
Sacramento, CA 95625-1846

RE: Institute Golf Course Draft EIR USFWS-Requested Offsite and Onsite Mitigation Measures, Santa Clara County, California (Weinrich letter to Jim Rowe, July 15, 2003)

Dear Mr. Buford:

We have reviewed the subject letter and agree to purchase a total of 51.2 acres of off-site mitigation lands and to provide the corresponding one time payment for our portion of the management cost, at the Kirby Ridge (VTA) site. The 51.2 acres would be composed of 35 'double count', California red-legged frog (CRF), and serpentine soil acres, plus 16.2 acres of CRF upland habitat. We understand that this offsite compensation will settle all issues to date regarding the loss of CRF upland habitat, serpentine soil habitat, and California tiger salamander habitat that the Service feels was impacted during golf course construction. Please note that this does not constitute an admission of guilt or agreement that such habitat was lost, as our studies comparing pre- and post-development actions found that more suitable habitat exists post-construction than existed pre-construction. However, we believe that the settlement is fair and offer this concurrence solely to bring conclusion to the issue.

Please furnish us with the proper "Settlement Agreement' paperwork including instructions as to how to coordinate the purchase.

Regarding on-site mitigation, we agree to remove sod and provide a vegetated buffer along portions of Corralitos Creek where prior owners had previously removed riparian vegetation. The buffer will be measured from the centerline of the creek, and will nowhere be less than a minimum of 30-feet in width except for the green side of hole no. 6. as previously agreed to by Valary Bloom as shown in Exhibit A.

Regarding the issue of 'incidental take, we have found no evidence of any 'take' during the five years of golf course operation and do not believe that incidental take is occurring. However, as noted in the letter, we will discuss the question of a Section 7 nexus with the U. S. Army Corps of Engineers during the permit application process for culvert

placement and reconstruction of two short sections of channel on the northern tributary. Failing establishing a federal nexus for Section 7 consultation on the entire course, we will pursue receipt of an incidental take permit as a part of a Safe Harbor agreement for the project area under Section 10 of the Act, as discussed previously.

Please call Randy Long at 925-672-0563 if you have any questions.

Sincerely,

Stephen R. Sorenson

cc. Jim Rowe, City of Morgan Hill

United States Department of the Interior
Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO:
1-1-03-TA-2369

JUL 15 2003

Mr. Jim Rowe
City of Morgan Hill
Planning Department
17555 Peak Avenue
Morgan Hill, California 95037

Subject: Institute Golf Course Draft EIR Clarification of Offsite and Onsite Mitigation Measures, Santa Clara County, California

Dear Mr. Rowe:

This letter details mitigation the applicant will conduct to offset effects of serpentine soil and California red-legged frog (*Rana aurora draytonii*) (red-legged frog) and California tiger salamander (*Ambystoma californiense*) (tiger salamander) habitat lost during the 1997 reconstruction of the pre-existing 9-hole golf course to an 18-hole course, which was completed without proper environmental review. We submitted a letter to the City of Morgan Hill during the formal comment period for the Draft EIR, however, at that time, the applicant and the Fish and Wildlife Service (Service) had not completed discussions regarding the subject mitigation. This letter is based on discussions and tentative agreement between the applicant and the Service.

Serpentine Soil Impacts

The subject property has approximately 80 acres of soil containing serpentine inclusions. Soils with serpentine inclusions may support serpentine soil dependant plants and animals, many of which are federally listed species, such as the endangered coyote ceanothus (*Ceanothus ferrisae*) and Santa Clara Valley dudleya (*Dudleya setchellii*), and the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*). Santa Clara Valley dudleya has been observed less than a mile from the project site and the bay checkerspot butterfly has been observed within 2 miles of the golf course (California Department of Fish and Game, Natural Diversity Database). By 1997, much of this serpentine soil habitat had been graded by the previous owners, to accommodate a housing project which was never built. Of the total serpentine soil area, a total of 25.5 acres was graded by the applicant and converted to turf. Rare plant and animal surveys were not conducted prior to the 1997 reconstruction by the applicant. However, these species could have occurred on-site and the conditions are currently such that their growth will no longer be supported on most of the site.

We have evaluated the quality of serpentine habitat lost and determined that the applicant should mitigate for this loss by purchasing habitat off-site at a two to one ratio. The applicant should purchase 51 acres of currently unprotected serpentine soil habitat and fund its management as habitat for serpentine-dependant species in perpetuity. The Service and the applicant have coordinated with staff from the Santa Clara Valley Transportation Authority (VTA) who are currently pursuing a purchase of about 1,500 acres, which includes serpentine soil habitat, for use as mitigation. Although VTA and other public and private entities plan to utilize much of this habitat as mitigation for their past and future projects, 35 acres would remain which function as serpentine soil and red-legged frog habitat and could be used as mitigation for other projects. Due to the quality of this mitigation habitat and its importance for protection, if the applicant agrees to purchase and manage this remaining acreage, the Service would agree to accept this acreage as sufficient compensation for serpentine soil habitat impacted by the applicant. If the applicant chooses to purchase serpentine soil habitat elsewhere, it may be appropriate for the applicant to compensate with a total of 51 acres.

California Red-legged Frog and California Tiger Salamander Habitat Impacts

Surveys for red-legged frogs and tiger salamanders were not conducted prior to the 1997 reconstruction. However, judging from aerial photography taken pre-1997 and because the applicant did not alter very much the riparian corridor within which they are now found, it is very likely that red-legged frogs were present on the project site prior to 1997. In 2001, a California Department of Fish and Game biologist identified larvae and sub-adult red-legged frogs in Corralitos Creek within the project site. All of the ponds on-site offer either breeding or summer refugia habitat for the species. Since no long-term monitoring occurred pre-1997 or since 1997, we cannot say with certainty how well red-legged frogs currently on the site are surviving with the reconfiguration of ponds on-site or with other typical golf course stresses, such as fertilizer use, golfer foot and cart traffic, and invasion of bullfrogs.

Prior to being graded and converted to turf by the applicant, the uplands between aquatic sites would have functioned as foraging and dispersal habitat. Existing conditions do not provide appropriate upland refugia for foraging and dispersing red-legged frogs either in the turf, which is routinely mowed and fertilized, or in the narrow bands of tall, non-native trees. Although some red-legged frog habitat was destroyed prior to 1997, we have reviewed aerial photography and counted only habitat within 500 feet of Corralitos Creek and determined that the applicant destroyed 25.6 acres of red-legged frog upland foraging and dispersal habitat.

We also have evaluated the quality of red-legged frog habitat lost and determined that the applicant should mitigate for the loss by purchasing habitat off-site in a two to one ratio. The applicant should purchase 51.2 acres of currently unprotected red-legged frog upland habitat and fund its management as habitat for the red-legged frog in perpetuity. If the applicant purchases the 35 acres described above which support both serpentine species and red-legged frog, the applicant may receive red-legged frog credit. However, the applicant would remain responsible for fulfilling the additional 16.2 acre red-legged frog habitat obligation. Surplus red-legged frog acres likely will be available through the purchase of the Castle and Cooke property being led by

VTA. We encourage the applicant to coordinate closely with VTA and the other involved parties to partake in this preservation opportunity.

In September 2001, Dr. Mark Jennings observed a metamorphosing tiger salamander entering a culvert near a pond at the southwestern corner of the project site. The species is known to currently occupy the project site and likely occupied the site prior to 1997 as well. The tiger salamander was officially proposed for listing as a threatened species on May 23, 2003 (68 FR 28647). Although the Act does not afford the tiger salamander the same protections provided to federally listed animals, we are monitoring their status and acknowledge that the measures taken to compensate for destroyed red-legged frog habitat will partially compensate for effects which occurred to tiger salamander habitat as well.

On-site, the applicant should set back fairways to restore the riparian corridor along Corralitos Creek and its tributaries. A riparian buffer shall be planted and maintained on each side of the creek and be an average of 70 feet and a minimum of 30 feet wide, measured from the centerline of the creek. The buffer widths shall be as depicted in the enclosed Exhibit A.

During discussions with the Service regarding the golf course's need for incidental take coverage of listed species, the applicant informed the Service that they would be discussing with the U.S. Army Corps of Engineers (Corps), a design plan for the addition of a bridge or culvert on the golf course. The applicant hopes that the Corps would serve as a Federal nexus at that point to initiate section 7 consultation with the Service on listed species issues at the site. At the time of section 7 consultation, we expect to work with the applicant further to identify ways of avoiding and minimizing effects to listed species resulting from the ongoing use and maintenance of the golf course.

In summary, the Service believes that the measures described above appropriately compensate for the loss of habitat which occurred from the 1997 reconstruction. The Service will work with the applicant to facilitate the purchase of 35 acres of serpentine soil habitat and 51.2 acres of red-legged frog habitat on the Castle and Cooke property, or any other area which adequately compensates for the project's impacts.

If you have further questions regarding this letter, please contact Valary Bloom or Dan Buford at (916) 414-6615.

Sincerely,

Doug Weinrich

Doug Weinrich
Acting Chief, Endangered Species Program

Enclosure
cc:

CDFG, Monterey, CA, (Attn: Dave Johnston)
Caltrans, District 4, Oakland, CA (Attn: Margaret Gabil)

EXHIBIT F

Sorenson – Additional detailed response to significant impacts

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Detail Comments
On the Significant Impacts
Listed in Section II
Of the Revised Draft EIR

Significant Impact: Erosion and Siltation

Significant Impact #: 1

RDEIR Page #: 26

The previous owner of the property graded residential streets and building pads into the hillside. The applicant restored the site to contours that more closely resemble the natural contours that were on the site prior to the attempted residential development.

Prior to development, the applicant commissioned a civil engineering firm to perform a geotechnical study of the site. This geotechnical firm, Klienfelder, has experience engineering local golf courses. Klienfelder did a geotechnical report on the entire site. Prior to development, this geotechnical report was supplied to the City

Prior to development a grading plan for the entire site was provided to the City. This grading plan was stamped by a licensed engineer.

After construction, the City requested an "as built" grading plan. The applicant contracted with a license civil engineer to perform the survey. This "as built" grading plan was provided to the City and to the consultants for the City.

After construction was completed, the first DEIR requested two additional geotechnical studies. The first study was of the berm that runs along Foothill Avenue. This is the same berm that the City of Morgan Hill requested that the applicant add to the grading plan. This berm had already been approved by a civil engineer, and permitted by the City. Despite this, the applicant performed the requested geotechnical study. The berm passed the geotechnical inspection.

The second requested geotechnical study requested by the DEIR was of bank of the northern most pond. This study was also performed. The bank of the pond also passed geotechnical inspection.

Both of these studies were provided to the City and its consultants.

The applicant has provided all the grading plans (before and after) and geotechnical studies (before and after) requested by the City and the DEIR.

The golf course has been in operation for five years. During that five years, there have been no instances of erosion or soil instability.

This is **NOT** a significant impact. In the Final EIR, this should be reduced to Less Than Significant.

CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."
The repeated requests for the same information, when there is no evidence to support any concern, subverts the intent of CEQA.

Mitigation

Suggested Mitigation #: 1
RDEIR page #: 27

The RDEIR requests yet another geotechnical study.

Applicant's mitigation: The consultants for the City will use the existing grading plans (before and after) and the existing geotechnical reports (before and after) to get comfort.

Significant Impact: Seismic

Significant Impact #:2

RDEIR Page #: 27

Mitigation

Suggested Mitigation #: 2
RDEIR page #: 27

The RDEIR requests that the applicant not occupy the structure until after building is demolished and re-construction.

Applicant's mitigation: Applicant will not occupy the structure until it is remodeled or re-constructed.

Significant Impact: Use Might Adversely Affect Riparian Habitat

Significant Impact #:3

RDEIR Page #: 41

There is no evidence that the use adversely affects the habitat in the riparian area. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

The RDEIR states that 0.5 acres of riparian area was removed during construction. This is not true.

This should **NOT** be included as a Significant Impact.

Mitigation:

Suggested Mitigation #: 3
RDEIR page #: 53

The RDEIR requests a buffer around the riparian area.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

Suggested Mitigation #: 4
RDEIR page #: 53

The RDEIR suggests that the riparian area be replanted with native species plants.

Applicant's mitigation: Applicant will replant the riparian area based on the agreement with the USFWS. A creek restoration plan has been submitted to the USFWS.

Suggested Mitigation #: 5
RDEIR page #: 53

The RDEIR suggests that lighting be minimized in the riparian area.

Applicant's mitigation: Applicant agrees to the suggested mitigation.

Suggested Mitigation #: 6
RDEIR page #: 53

The RDEIR suggests that a fence be constructed around the riparian area.

Applicant's mitigation: Applicant will maintain the riparian area in a manner consistent with the agreement with the USFWS and the creek restoration plan submitted to USFWS.

Suggested Mitigation #: 7
RDEIR page #: 53

The RDEIR suggests setbacks around the riparian area.

Applicant's mitigation: Applicant will create setbacks based on the agreement reached with the US Fish and Wildlife Service (USFWS).

Significant Impact: Use Might Adversely Affect CRF or CTS or WPT

Significant Impact #: 4

RDEIR Page #: 43

There is no evidence that the use adversely affects the CRF, CTS, or the WPT. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

In fact, Mark Jennings Ph.D., a noted expert on frogs, states that the golf course and frog habitat are compatible uses. Frogs are nocturnal. The golf course is inactive at night (other than irrigation, which the frogs may like.) The applicant has created dispersal corridors running across the property. These corridors allow animals, including frogs, to traverse the property using forested pathways.

The evidence supports the findings of Dr. Jennings. Red legged frogs are flourishing on site. Please see the results of the frog survey.

Since the evidence points toward a conclusion that the project is good for frogs, there should **NOT** be a significant impact in the Final EIR. The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

In addition, all issues (past, present, and future) with respect to CRF, CTS, and WPT have been resolved. The applicant and the USFWS (the lead agency for issues related to endangered species) have agreed to a set of on-site and off-site mitigations. Since this agreement exists, all impacts to CRF, CTS, and WPT, as well the associated mitigations, should be removed from the EIR.

Mitigation:

Suggested Mitigation #: 8
RDEIR page #: 50

The RDEIR suggests an agreement with USFWS.

Applicant's mitigation: Applicant has an agreement with the US Fish and Wildlife Service (USFWS).

Suggested Mitigation #: 9
RDEIR page #: 50

The RDEIR suggests that the applicant purchase land as off-site mitigation.

Applicant's mitigation: Applicant will purchase acreage for off-site mitigation per the agreement with the USFWS.

Suggested Mitigation #: 10
RDEIR page #: 50

The RDEIR suggests that the applicant purchase land as off-site mitigation.

Applicant's mitigation: Applicant will purchase acreage for off-site mitigation per the agreement with the USFWS.

Suggested Mitigation #: 11
RDEIR page #: 50

The RDEIR requests buffers.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

Suggested Mitigation #: 12
RDEIR page #: 50

The RDEIR suggests managing the bullfrog.

Applicant's mitigation: Applicant will manage the bullfrog. However, experts indicate that draining the ponds (while it may help control the bullfrog) may be harmful to the CRF. So, bullfrogs will be managed directly.

Suggested Mitigation #: 13
RDEIR page #: 50

The RDEIR suggests managing the bullfrog by draining ponds.

Applicant's mitigation: Applicant will manage the bullfrog. However, experts indicate that draining the ponds (while it may help control the bullfrog) may be bad to the CRF. So, bullfrogs will be managed directly.

Suggested Mitigation #: 14
RDEIR page #: 51

The RDEIR requests buffers.

Applicant's mitigation: Applicant will create buffers based on the agreement reached with the US Fish and Wildlife Service (USFWS).

Suggested Mitigation #: 15
RDEIR page #: 51

The RDEIR requests that water quality in the ponds be monitored monthly.

Applicant's mitigation: Applicant will monitor water quality based on existing regulations covering the SWPPP and the NPDES for the site. In addition, the applicant will monitor water quality on an episodic basis. For example, the applicant will monitor surface water quality after the applicant applies fertilizer or pesticides.

Suggested Mitigation #: 16
RDEIR page #: 51

The RDEIR requests that "shelves" be constructed in the ponds.

Applicant's mitigation: The ponds are currently home to many red legged frogs. Only one bullfrog was found during the most recent survey. With success like this, the applicant is reluctant to change the habitat in which the CRF is currently flourishing (and the bullfrog is not). So, shelves will not be constructed.

Suggested Mitigation #: 17
RDEIR page #: 51

The RDEIR requests that the drainage system be re-routed.

Applicant's mitigation: There is no evidence of harmful run-off to the surface water. Many samples of the surface water have been taken. The surface water is free of pesticides and low in nitrates. The surface water on-site is better than the water from the wells.

The courts have found "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (Costa Mesa).

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Since all the evidence points toward clean water on site, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

Suggested Mitigation #: 18
RDEIR page #: 51

The RDEIR requests setbacks.

Applicant's mitigation: Applicant will create setbacks based on the agreement reached with the US Fish and Wildlife Service (USFWS).

Significant Impact: Burrowing Owls

Significant Impact #: 5

RDEIR Page #: 44

No burrowing owls have been observed on site.

Mitigation

Suggested Mitigation #: 19
RDEIR page #: 46

The RDEIR requests that the applicant adhere Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

Applicant's mitigation: For all future construction, such as the math research center, the applicant will adhere to Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

With respect to the existing golf course, burrowing owl studies have been completed. No burrowing owls were found. In addition, no evidence of burrowing owls was found. So, the existing golf course is not subject to the City's burrowing owl plan and the associated fee.

Also, four years ago when this EIR was begun, Morgan Hill's City Wide Burrowing Owl Mitigation Plan did not exist. The existing project is not subject to ex post facto regulations, such as Morgan Hill's City Wide Burrowing Owl Mitigation Plan.

Significant Impact: Raptors

Significant Impact #: 6

RDEIR Page #: 44

There is one raptor on site. A female red tail hawk lives on site. She has lived on site since the applicant purchased the property. During that time, she has successfully mated and produced young.

As a humorous aside, this hawk lives in a "non-native" eucalyptus tree next to the second green.

Mitigation

Suggested Mitigation #: 20
RDEIR page #: 46

The RDEIR suggest that construction only occur from September through December.

Applicant's mitigation: This is one of the many conflicts in the RDEIR. The CRWQCB recommends that no construction occur during the rainy season from October 15 through April 15. So, suggesting that construction be limited to September through December is at odds with another suggested mitigation.

This type of mitigation is, of course, not mitigation at all. This is a subversion of the intent of CEQA. The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Since all the evidence points toward a continuing habitat that supports raptors, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

Suggested Mitigation #: 21
RDEIR page #: 46

The RDEIR suggests pre-construction surveys.

Applicant's mitigation: Applicant agrees to perform pre-construction surveys for raptors.

Significant Impact: Swallows

Significant Impact #: 7

RDEIR Page #: 45

Mitigation

Suggested Mitigation #: 22
RDEIR page #: 47

The RDEIR suggest that construction only occur from September through February.

Applicant's mitigation: This is one of the many conflicts in the RDEIR. The CRWQCB recommends that no construction occur during the rainy season from October 15 through April 15. So, suggesting that construction be limited to September through December is at odds with another suggested mitigation.

This type of mitigation is, of course, not mitigation at all. This is a subversion of the intent of CEQA. The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

Courts have also found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Since all the evidence points toward a continuing habitat that supports raptors, there is no impact. So, the "roughly proportional" mitigation is no mitigation.

Suggested Mitigation #: 23
RDEIR page #: 47

The RDEIR suggests removal of old nests.

Applicant's mitigation: Applicant agrees to remove old swallow nests.

Suggested Mitigation #: 24
RDEIR page #: 47

The RDEIR suggests pre-construction surveys.

Applicant's mitigation: Applicant agrees to perform pre-construction surveys for swallows.

Significant Impact: Bats

Significant Impact #: 8

RDEIR Page #: 45

No bats have been observed on site.

Mitigation

Suggested Mitigation #: 25
RDEIR page #: 47

The RDEIR suggests pre-construction surveys.

Applicant's mitigation: Applicant agrees to perform pre-construction surveys for bats.

Suggested Mitigation #: 26

The RDEIR suggests that if a maternity roost found, re-design project.

Applicant's mitigation:

Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Re-designing the math conference center is not proportional to the finding of a bats nest. This is an example of something that could be worked out on-site with a bat expert.

If maternity roost found, consult a bat expert. Work with the bat expert to develop options that are reasonable and feasible for the bats and the project.

Suggested Mitigation #: 27
RDEIR page #: 48

The RDEIR suggests that if a maternity roost found, re-schedule project.

Applicant's mitigation:

This is another example of conflict within the RDEIR. The time period that is recommended for re-scheduling is the time that another agency recommends that construction not occur.

Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4). Re-scheduling the construction of the math conference center is not proportional to the finding of a bat's nest. This is an example of something that could be worked out on-site with a bat expert.

If maternity roost found, consult a bat expert. Work with the bat expert to develop options that are reasonable and feasible for the bats and the project.

Suggested Mitigation #: 28
RDEIR page #: 48

The RDEIR suggests that if a "non-breeding" nest found, evict the bats.

Applicant's mitigation: Applicant will evict "non-breeding" bats.

Suggested Mitigation #: 29
RDEIR page #: 48

The RDEIR suggests that prior to applying for any permits, the applicant must present proof that the property has been inspected for bats.

Applicant's Mitigation:

Bats have not been observed on site. Permits are routinely issued without inspections for bats. Requiring the applicant to provide proof of bat inspection prior to ALL permit applications might be viewed by some as a punitive measure. Clearly, such a suggestion is a subversion of the intent of CEQA, which is to inform.

The State and the courts have ruled against this type of ad hoc extraction. CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

The event that has triggered this EIR is the request for approval of a PUD to operate a math conference center in a building at the site of the old Flying Lady restaurant. The applicant agrees to have the old Flying Lady restaurant inspected for bats prior to demolition. However, it is unreasonable to require an inspection for bats for ALL permits- no matter how small.

Significant Impact: Downstream surface water

Significant Impact #: 9

RDEIR Page #: 45

The surface waters on site have been sampled many times. The lab results from these studies indicate that the water is free of fertilizers and pesticides. There is no evidence of this impact, but there is plenty of evidence that the impact is not occurring. Therefore, this should be reduced to Less Than Significant in the Final EIR.

Mitigation

Suggested Mitigation #:
RDEIR page #:

None

Applicant's mitigation:

Significant Impact: Run-off to Foothill Avenue

Significant Impact #: 10

RDEIR Page #: 62

A more complete analysis of the run-off from the site indicates that the run-off from the site is less than before the project was completed. A letter, from a local hydrologist, describing this analysis is attached.

The RDEIR mentions one example of localized flooding. This event occurred in 1999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill Avenue and the property. Due to an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event, and without any prompting, had a pipe installed under the new apron. After the pipe was installed, no localized flooding has occurred.

Shortly, after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is built below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court. To get to Bartlett Court, one would go south on Foothill, west on Middle, and then north on Bartlett. The person admitted that his flooding problem has two causes. The first cause is that his property is below grade. The second cause is that a drainage culvert does not exist on the west side of Foothill (not the golf course side). The lack of a culvert allows water to travel from the crest of Foothill across lots on west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

The one instance of localized flooding was not caused by golf course flows. It was caused by a construction error. This event is fully explained and remedied. This is not a significant impact. It should be reduced to Less Than Significant in Final EIR.

Mitigation

Suggested Mitigation #: 30

RDEIR page #: 73

Re-design the drainage system

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

Suggested Mitigation #: 31
RDEIR page #: 73

Eliminate outflow pipe. Contain 100 year storm on site.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

Even if there was a significant impact, the goal of the mitigation would be to reduce the impact to less than significant. The applicant suggests that some small additional out flow of water from the property would be an impact, but not a significant impact. A large increase in the outflow of water would be a significant impact. So, goal of the mitigation should be to reduce the impact to less than significant. The requested mitigation goes well beyond what is needed to reach the less than significant level. Some might interpret such a mitigation request as punitive.

Courts have found that "the mitigation measure must be roughly proportional to the impacts" (Dolan). This finding was adopted by the State in its CEQA guidelines (15126.4).

Suggested Mitigation #: 32
RDEIR page #: 73

Submit new drainage plan.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

The applicant submitted a drainage plan to the City and to its consultants. The City requested an as-built grading plan. The applicant submitted an as-built grading plan to the City and to its consultants. The City then asked for the as-built drainage plan to be layered over the as-built grading plan. The applicant provided the as-built drainage plan on the as-built grading plan.

In addition, the applicant has provided a complete water flow analysis to the City and to its consultants. After submitting the water flow analysis, the consultant for

the City indicated some mis-understanding of the analysis. So, the applicant provided the City and its consultant more explanation of the analysis.

The request for more analysis of this issue is pointless and abusive.

Suggested Mitigation #: 33
RDEIR page #: 73

Empty ponds in the winter.

Applicant's mitigation: There is not a significant impact, so no mitigation is required.

This is another example of conflict within the RDEIR. One suggested mitigation in the RDEIR says that the project should create more ponds. In this suggested mitigation (33), the RDEIR recommends that the applicant drain the ponds that are on site now. Two frog experts have stated that draining ponds puts the CRF at risk. So, the experts recommend that the applicant not drain the ponds.

CRF's are flourishing on site. So, the current environment is conducive to the CRF. So, the applicant is reluctant to change that environment.

Significant Impact: Soil erosion from future construction

Significant Impact #: 11

RDEIR Page #: 63

The applicant has applied for a change of use. The applicant has not applied for a building permit. The consideration of construction erosion control should occur at the time of application for the building permit. The vast majority of construction does not require an EIR. However, all construction has the responsibility to control erosion. The City of Morgan Hill routinely requires an erosion control plan (ECP) with a permit application. So, the practice in the City of Morgan Hill is to consider construction erosion control at the time of building permit evaluation, and not to require each project to perform an EIR on erosion control.

It is not appropriate to consider erosion control abstractly in the EIR when the practice in the City of Morgan Hill is to consider it during the permit application process. In particular, it is a stretch to label an abstract notion of construction erosion control as a significant impact of a change in use.

<u>This should be reduced to less than significant in the Final EIR.</u>

Suggested Mitigation #: 34
RDEIR page #: 73

National Pollutant Discharge Elimination System (NPDES) permit.

Applicant's mitigation: Applicant will apply for NPDES permit

Suggested Mitigation #: 35
RDEIR page #: 73

Prepare ECP prior to any construction

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 36
RDEIR page #: 74

Prepare ECP including fiber rolls and sedimentation basins.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 37
RDEIR page #: 74

Prepare ECP including protecting graded slopes.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ECP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 38
RDEIR page #: 74

Prepare ECP including protecting storm drains from sedimentation.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ERP in conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 39
RDEIR page #: 74

Prepare ECP that excludes construction from October 15 through April 15.

Applicant's mitigation: Applicant will prepare and submit an ECP for any construction that requires an ERP in conformance with the City of Morgan Hill grading ordinance.

Excluding construction from October 15 through April 15 is not feasible, nor is it a reasonable request. For example, indoor construction activities will have no affect on erosion. Even outdoor construction, provided effective erosion control measures are in place, will not result in erosion. So, the date restriction is arbitrary and unnecessary.

Suggested Mitigation #: 40
RDEIR page #: 74

City of Morgan Hill to inspect erosion control measures.

Applicant's mitigation: Applicant agrees to allow the City of Morgan Hill to inspect the erosion control measures to assure conformance with the City of Morgan Hill grading ordinance.

Suggested Mitigation #: 41
RDEIR page #: 74

Clear debris and sediment from channels.

Applicant's mitigation: Applicant will clear debris and sediment from drainage channels.

Suggested Mitigation #: 42
RDEIR page #: 74

Establish program to clean culverts, drains, etc..

Applicant's mitigation: Applicant will establish a program to maintain drainage culverts, drains inlets, and energy dissipaters.

Significant Impact: Non point source run-off

Significant Impact #: 12

RDEIR Page #: 64

Suggested Mitigation #: 43
RDEIR page #: 74

Provide dikes around maintenance areas and roofing over areas where potential for oil or fuel spillage is high

Applicant's mitigation: Applicant has installed a wash station with a waster water recycling system. In addition, equipment is maintained in a building with a concrete floor and a roof. The "use" of the building in which equipment maintenance is performed has already been changed to include equipment maintenance.

Suggested Mitigation #: 44
RDEIR page #: 74

Provide oil/grease separators in catch basin in parking lots.

Applicant's mitigation: Agreed.

Suggested Mitigation #: 45
RDEIR page #: 74

Control liter and other debris.

Applicant's mitigation: Agreed.

Suggested Mitigation #: 46
RDEIR page #: 75

Modify golf course design to provide run-off buffers.

Applicant's mitigation: There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

A significant impact may not be claimed, and a mitigation may not be required, without "substantial evidence".

The applicant agrees to create buffers per the agreement with the USFWS.

Suggested Mitigation #: 47
RDEIR page #: 75

All the mitigations as for erosion (see mitigations 34 through 42).

Applicant's mitigation:

The response of the applicant is the same as for mitigations 34 through 42, respectively.

Significant Impact: Nitrogen loading in ground water

Significant Impact #: 13

RDEIR Page #: 66

Significant Impact: Nitrogen loading in surface water

Significant Impact #: 14

RDEIR Page #: 67

Surface Water

There is no evidence to support these two significant impacts. In fact, there is evidence that shows that the project is improving the quality of surface water. The surface waters have been sampled many times. The lab analysis of these samples demonstrates that the nitrogen level in the surface water on site is less the nitrogen levels in the water from the wells.

The decline in nitrogen level in the water is likely due plant life consuming the nitrogen. This occurs two ways. First, the turf consumes the nitrogen in the water before it enters the bodies of water. During the time that the water is captured in the bodies of water, the aquatic plant life consumes some of the nitrogen.

Since there is no evidence that the project is adding nitrogen to the surface water, this impact should be reduced to less than significant in the Final EIR.

Ground Water

There is no evidence that the project is contributing to nitrogen in the ground water. In fact, the nitrogen level in the ground water wells on site is significantly better than the average for the region. The SCVWD assumed that the project was contributing to nitrate in the ground water and then tried to find evidence to support their conclusion. The SCVWD examined a well across the street from the project. The SCVWD noted that the level of nitrate has increased over the life of the well. Examination of the data shows that the increase in nitrate level in that well occurred **BEFORE** the golf course began operation. Since the golf course has been in operation, the level of nitrate in that well has actually gone down.

Moreover, the SCVWD did not mention that the well across the street from the project (the well that SCVWD attempted to use to blame the project for increasing the level of nitrate) is actually one of only three wells in the region that meets the nitrate standard in the Safe Drinking Water Act.

The applicant has been executing a Nitrogen Control Plan (NCP). Before applying fertilizer the applicant does the following:

1) Take a soil sample. Send to lab to determine the needs of the soil.
2) Take turf tissue samples. Send to lab to determine the needs of the plant.
3) Take an irrigation water sample. Send to lab to determine the nitrogen available from the irrigation water.

Based on these analyses, the applicant only applies the amount of fertilizer that can be used by the turf. This process has resulted in low nitrate in the surface waters on site and no contribution to nitrates in the ground water. The applicant developed and implemented this NCP on its own- without any prompting from any agency.

The cynical among us may think that an unscrupulous golf course operator may implement a NCP for a period of time. Then, when "no one is looking", switch to a higher nitrogen application rate. This would not be in the best interest of the golf course operator. Excess nitrogen promotes growth of thatch in turf (a bad thing), and leaves the grass prone to many disease that occur only when too much nitrogen has been applied.

The applicant agrees to formalize this process described above in a written Nitrogen Control Plan.

Since there is no evidence that the project is adding nitrogen to the ground water, and no rational incentive to apply excess nitrogen, this impact should be reduced to less than significant in the Final EIR.

Suggested Mitigation #: 48
RDEIR page #: 75

Prepare a NCP.

Applicant's Mitigation: The applicant will prepare a NCP that documents the existing practices that have successfully controlled nitrates in the ground water and in the surface water.

Suggested Mitigation #: 49
RDEIR page #: 75

Prepare an annual accounting of nitrogen application rates.

Applicant's Mitigation: The applicant will prepare annual accounting of nitrogen application rates and nitrogen content of the irrigation water.

Suggested Mitigation #: 50
RDEIR page #: 75

Prepare an analysis that shows that current nitrogen loading to the aquifer is less than use prior to project.

Applicant's Mitigation: This is not possible. However, the applicant has already submitted an analysis that shows that if any water from the project reached the aquifer, it would dilute the nitrate in the ground water. This analysis has been provided to the City's consultants. The applicant considers this mitigation to be complete.

Suggested Mitigation #: 51
RDEIR page #: 75

Submit above to SCVWD and RWQCB for review and approval and recommendations.

Applicant's Mitigation: The applicant has already produced evidence that the project is not contributing to nitrate loading in the ground water or the surface water. The RDEIR has produced no evidence that the project is contributing to nitrogen loading. This mitigation is intended to be penal.

The nitrogen application will be based on the NCP.

Suggested Mitigation #: 52
RDEIR page #: 75

Test irrigation water for nitrates and adjust fertilization accordingly.

Applicant's Mitigation: Agree.

Suggested Mitigation #: 53
RDEIR page #: 75

Monitor irrigation water monthly.

Applicant's Mitigation: The nitrate level in the irrigation water does not vary greatly over time. Testing water for nitrates is expensive. Applicant agrees to test the irrigation water for nitrate and TKN once each quarter.

Suggested Mitigation #: 54
RDEIR page #: 75

Application of fertilizer shall be determined based on irrigation rates, site specific conditions, and turf requirements.

Applicant's Mitigation: Agree.

Suggested Mitigation #: 55
RDEIR page #: 75

A soil monitoring program shall be implemented to determine appropriate application rates, in accordance with the recommendations provided by the SCVWD.

Applicant's Mitigation: The applicant will implement a soil monitoring program as part of the NCP. The soil monitoring program will include soil samples and laboratory analysis. The NCP will include a section that determines the type of fertilizer and the application rate of that fertilizer based on the lab analysis of the soil (among other factors).

Suggested Mitigation #: 56
RDEIR page #: 76

Use slow release fertilizer when possible.

Applicant's Mitigation: The applicant will use slow release fertilizer when it does not present a risk of entering the surface water.

Suggested Mitigation #: 57
RDEIR page #: 76

Limit irrigation to EVT + mineral dilution.

Applicant's Mitigation: The irrigation formula suggested in the RDEIR does not take into account some important factors. The process of determining irrigation quantities is more complicated than the simplistic equation proposed by the City's consultant. For example, the EVT is based on the past weather. The irrigation amount should be based on passed weather, the weather forecast, the amount of water that has been applied recently (through irrigation or rain), and other factors.

The applicant will apply the minimum irrigation necessary to maintain healthy turf. Note: in the long run, healthy turf requires less water, fewer pesticides, and less fertilizer.

Suggested Mitigation #: 58
RDEIR page #: 76

Time fertilization plant need and weather.

Applicant's Mitigation: Agree.

Suggested Mitigation #: 59
RDEIR page #: 76

Reduce turf.

Applicant's Mitigation: The suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because "it does not attain the most basic objectives of the project.". The suggested mitigation is not a mitigation, so it should be removed from the EIR.

Suggested Mitigation #: 60
RDEIR page #: 76

Provide buffers.

Applicant's Mitigation:

There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

A significant impact may not be claimed, and a mitigation may not be required, without "substantial evidence".

The applicant has a pre-existing agreement with the USFWS to provide buffers. The applicant will provide buffers per that agreement.

Suggested Mitigation #: 61
RDEIR page #: 76

Provide buffers for outfalls.

Applicant's Mitigation:

There is no evidence to indicate that this mitigation is needed. In fact, the surface waters on site have been sampled on many occasions. The lab analysis of these

samples demonstrates that the water on site is free of pesticides. So, the existing landscape and practices are adequately protecting the surface water.

In addition, there are studies done at other golf courses that show that turf grass is an excellent buffer and filter of the type that the authors of the RDEIR desire.

With this in mind, this mitigation should be removed because it involves mitigating an impact that is not occurring.

There is a history here that is worth recounting. At different times different agencies have requested that the outfalls be built in different ways. At one time, it was asked that the outfalls continue to the base of the creek to minimize erosion. At other times, it was requested that the outfalls be at the creek bank with rip-rap added to slow and spread the flow of water. In an attempt to conform to the desires of agencies, the outfalls on site have been built and re-built. Now, the consultant for the City suggests a third version.

The applicant has a pre-existing agreement with the USFWS to provide buffers. The applicant will provide buffers per that agreement.

Suggested Mitigation #: 62
RDEIR page #: 76

Remove turf at the creek channel at hole 3 and create buffers.

Applicant's Mitigation: The applicant agrees to remove the turf. The applicant agrees to re-vegetate the area with native species per the creek restoration plan submitted to the USFWS. The applicant agrees to create buffers in that area based on the pre-existing agreement with the USFWS.

Suggested Mitigation #: 63
RDEIR page #: 76

More buffers.

Applicant's Mitigation: The applicant agrees to provide buffers per the USFWS agreement.

Significant Impact: Pesticides in surface water

Significant Impact #: 15

RDEIR Page #: 68

Significant Impact: Pesticides in ground water

Significant Impact #: 16

RDEIR Page #: 69

There is no evidence, substantial or otherwise, of contamination of the surface waters by pesticides. In fact, the surface waters on site have been sampled and analyzed at a laboratory on numerous occasions. These analyses demonstrate that the surface waters are free of pesticides.

Certainly pesticides are a concern for all of us. However, in this case, there is no basis for a conclusion that pesticides in the surface water are a significant impact of this project. This should be reduced to less than significant in the Final EIR.

Suggested Mitigation #: 64
RDEIR page #: 76

Prepare a Chemical Application Management Plan (CHAMP) and submit to City of MH and to RWQCB for review and approval.

Applicant's Mitigation: The applicant agrees to prepare a CHAMP consistent with other the CHAMPs of other golf courses in the area.

Suggested Mitigation #: 65
RDEIR page #: 77

Prepare a Chemical Application Management Plan (CHAMP) that meets 15 additional conditions.

Applicant's Mitigation: The applicant agrees to prepare a CHAMP consistent with other the CHAMPs of other golf courses in the area.

Significant Impact: Pesticides in run-off to Foothill Avenue

Significant Impact #: 17

RDEIR Page #: 71

There is no evidence, substantial or otherwise, of contamination of the surface waters by pesticides. In fact, the surface waters on site have been sampled and analyzed at a laboratory on numerous occasions. These analyses demonstrate that the surface waters are free of pesticides.

Certainly pesticides are a concern for all of us. However, in this case, there is no basis for a conclusion that pesticides in the surface water are a significant impact of this project. This should be reduced to less than significant in the Final EIR.

Suggested Mitigation #: 66
RDEIR page #: 78

National Pollutant Discharge Elimination System (NPDES) permit.

Applicant's Mitigation: The applicant will apply for a NPDES permit from the CRWQCB.

Suggested Mitigation #: 67
RDEIR page #: 78

Prove that lakes can contain a 100 year storm.

Applicant's Mitigation:

A more complete analysis of the run-off from the site indicates that the run-off from the site is less than before the project was completed. A letter describing this analysis that makes it easier for the City's consultant to understand is attached.

The RDEIR mentions one example of localized flooding. This event occurred in 1999 when the entry road to the property was moved. A drainage culvert runs parallel to Foothill Avenue between the roadway and the property. A new apron was paved between Foothill Avenue and the property. Due to an oversight, a pipe to pass water, conveyed in culvert, underneath the apron was not installed. Water in the culvert hit the new apron and flowed up and over both the apron and Foothill Avenue.

The applicant observed this event, and without any prompting, had a pipe installed under the new apron. Since, the installation of the pipe no localized flooding has occurred.

Shortly, after this event, one neighbor notified the City. The applicant met with the neighbor. The neighbor admitted that his home is built below grade and that it flooded prior to the construction of the golf course.

In 2003, another person stated in the press that the project caused flooding of his property. The applicant met with the person who made the statement to the press. He lives on Bartlett Court. To get to Bartlett Court, one would go south on Foothill, west on Middle, and then north on Bartlett. The person admitted that his flooding problem has two causes. The first cause is that his property is below grade. The second cause is that a drainage culvert does not exist on the west side of Foothill (not the golf course side). The lack of a culvert allows water to travel from the crest of Foothill across lots on west side of Foothill and into his backyard on Bartlett. The homeowner now admits that the golf course is not responsible for his flooding issue.

The one instance of localized flooding was not caused by golf course flows. It was caused by a construction error. This event is fully explained and remedied. This is not a significant impact.

Even if there was a significant impact, the goal of the mitigation would be to reduce the impact to less than significant. The applicant suggests that some small additional out flow of water from the property would be an impact, but not a significant impact. A large increase in the outflow of water would be a significant impact. So, goal of the mitigation should be to reduce the impact to less than significant. The requested mitigation goes well beyond what is needed to reach the less than significant level. Some might interpret such a mitigation request as punitive.

Suggested Mitigation #: 68
RDEIR page #: 78

Provide yet another drainage plan and water flow analysis.

Applicant's Mitigation:

The applicant submitted a drainage plan to the City and to its consultants. The City requested an as-built grading plan. The applicant submitted an as-built grading plan to the City and to its consultants. The City then asked for the as-built drainage plan to be layered over the as-built grading plan. The applicant provided the as-built drainage plan on the as-built grading plan.

In addition, the applicant has provided a complete water flow analysis to the City and to its consultants. After submitting the water flow analysis, the consultant for the City indicated some mis-understanding of the analysis. So, the applicant provided the City and its consultant with more explanation of the analysis.

The request for more analysis of this issue is pointless and abusive.

The State and the courts have ruled against this type of activity in an EIR. CEQA guidelines (15003) constrain the scope of EIR's stating: "It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."

Suggested Mitigation #: 69
RDEIR page #: 79

Provide a list of chemicals that are added to the ponds.

Applicant's Mitigation:

Applicant has provided numerous laboratory analyses of the water in the ponds. These analyses show that no pesticides or herbicides are in the ponds.

Significant Impact: Depletion of ground water

Significant Impact #: 18

RDEIR Page #: 82

A local hydrogeology consultant, Aquifer Sciences, performed a wide ranging study of water levels in the aquifer surrounding the project. The study from Aquifer Sciences found that during the five years that the project has be operational, the water level in the aquifer is unchanged.

From their study, Aquifer Sciences did uncover one interesting correlation. The water level in the aquifer goes up after rainy years and goes down following dry years. Aquifer Sciences notes that water levels in wells in the basin that are separated by relative large distances rise and fall simultaneously following significant weather changes.

The upshot is that the project does not affect the water level in the aquifer, but the weather does.

We all depend on the water in the aquifer. The applicant shares this dependency and a concern for the aquifer. However, the data indicates that ground water depletion is not a significant impact of this project. This should be reduced to Less Than Significant in the Final EIR.

Suggested Mitigation #: 70
RDEIR page #: 83

Use a computerized irrigation management system.

Applicant's Mitigation: Agree. A computerized irrigation system is in place and has been inspected by SCVWD.

Suggested Mitigation #: 71
RDEIR page #: 84

Reduce turf.

Applicant's Mitigation: The suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because "it does not attain the most basic objectives of the project.". The suggested mitigation is not a mitigation, so it should be removed from the EIR.

Suggested Mitigation #: 72

RDEIR page #: 84

Perform yet another ground water study.

Applicant's Mitigation: The applicant has already provided a study of water levels in the aquifers. The study from Aquifer Sciences found that during the five years that the project has be operational, the water level in the aquifer is unchanged.

From their study, Aquifer Sciences did uncover one interesting correlation. The water level in the aquifer goes up after rainy years and goes down following dry years. Aquifer Sciences notes that water levels in wells in the basin that are separated by relative large distances rise and fall simultaneously following significant weather changes.

The applicant will continue to monitor the water levels in the wells on site.

Suggested Mitigation #: 73
RDEIR page #: 84

Use re-cycled water.

Applicant's Mitigation: Applicant agrees to use re-cycled water if the re-cycled water is as good or better than the water from the aquifer, and the City provides the re-cycled water.

Significant Impact: Potable water

Significant Impact #: 19

RDEIR Page #: 82

Suggested mitigation #74:
RDEIR page #: 83

Prior to issuing building permits for the proposed Math Conference Center, apply for and obtain approval for connection to an approved public water system.

Applicant's Mitigation: As a condition of approval of the building permit for the proposed Math Conference Center, the applicant will apply for and obtain approval for connection to an approved public water system prior to receiving a Certificate of Occupancy.

The applicant has already applied to the City of Morgan Hill for connection to the public water system.

Or Suggested mitigation #75:
RDEIR page #: 84

Investigate hydrogeology of the site and the ground water quality to ensure a source of potable water.

Or Suggested mitigation #76:
RDEIR page #: 84

Modify the project to eliminate the need for potable water.

This suggestion by the City's consultant is NOT a mitigation. The suggestion is an alternative project. However, this alternative project fails the "rule of reason" because "it does not attain the most basic objectives of the project.". The suggested mitigation is not a mitigation, so it should be removed from the EIR.

Significant Impact: Water for fire protection

Significant Impact #: 20

RDEIR Page #: 83

Suggested mitigation #77:
RDEIR page #: 84

Prior to issuing building permits meet the requirement of the fire marshall.

Applicant's Mitigation: As a condition of approval of a building permit for the Math Conference Center, the applicant will meet the requirement of the Fire Marshall for water for fire protection prior to receiving a Certificate of Occupancy.

Significant Impact: Construction noise

Significant Impact #: 21

RDEIR Page #: 91

To label construction noise as a significant impact seems a logical stretch. If construction noise is a significant impact, then should all construction projects require an EIR?

In addition, CEQA (15125) states that: "Knowledge of the regional setting is critical to the assessment of environmental impacts".

In the case of this project, the site is in a noisy regional setting. The site adjoins Foothill Avenue. Foothill Avenue is a major thoroughfare. Pre-existing traffic noise exists. The property is in the flight path of the San Martin Airport. The airplanes contribute to noise on and around the site. Farm machinery contributes to the noise in the area. Noise from construction would be an insignificant addition to a region characterized by mechanical noise.

In the FEIR, construction noise should be reduced to a less than significant impact.

Suggested mitigation #78:
RDEIR page #: 91

Obey noise ordinances of the City of Morgan Hill.

Applicant's Mitigation:

Agree.

Suggested mitigation #79:
RDEIR page #: 91

Use noise suppression devices and proper mufflers.

Applicant's Mitigation:

All equipment will have the noise suppression devices that were installed on the equipment at the time of manufacture.

Significant Impact: Asbestos and lead

Significant Impact #: 22

RDEIR Page #: 94

Suggested mitigation #80:
RDEIR page #: 94

Use hazardous waste disposal company

Applicant's Mitigation: Agree

Suggested mitigation #81:
RDEIR page #: 94

Inspect for lead and asbestos before construction

Applicant's Mitigation: Agree

Significant Impact: Dust from construction

Significant Impact #: 23

RDEIR Page #: 98

If construction dust is a significant impact, then should all construction projects require an EIR?

In the FEIR, construction dust should be a less than significant impact.

Suggested mitigation #82:
RDEIR page #: 99

Comply with 13 conditions purported to be BAAQMD conditions.

Applicant's mitigation:

Applicant will comply with BAAQMD regulations that apply to the construction of the math center at the time of the construction.

Significant Impact: Odors from grass

Significant Impact #: 24

RDEIR Page #: 98

To label construction odors from grass as a significant impact is inappropriate.

CEQA guidelines (15125) state that:

"Knowledge of the regional setting is critical to the assessment of environmental impacts."

In this case, the City's consultants have not fully sensed the regional setting. The area surrounding the project is characterized by foul odors from:

Garlic processing
Horse manure from stables across the street
Manure based fertilizer used in agriculture on Foothill Avenue

Odors from grass are minor and will not be noticed in the regional setting. In the FEIR, odors from grass should be a less than significant impact.

Suggested mitigation #83:
RDEIR page #: 100

Either compost on site and develop a plan and submit same to City,

Or

Haul clippings off site

Or

Compost in situ

Applicant's mitigation:

Applicant will continue current practice of composting on site. Current practice has not created any objectionable odors.

Comments to Correct the Revised Draft EIR

The intent of this section is to correct seven statements made in the RDEIR that are factually incorrect.

Topic: Grading
RDEIR Page: 57

The RDEIR states:

"Grading of the golf course fairways and greens may have involved importation of soil, and a fertilization program; but no details are available on what was done."

During grading of the golf course soil was not imported. The grading was balanced on site to eliminate the need to import or export soil.

The one exception is that sand was purchased and placed beneath the greens and tees. The greens were constructed to the United States Golf Association specification.

Prior to seeding the fairways, the soil was amended with gypsum. Gypsum is a form of calcium. The intent of amending the soil with gypsum is twofold. 1) Gypsum increases its permeability of the soil. 2) Gypsum improves the ability of the soil to release nutrients to the turf. Klienfelder, a civil engineering firm, recommended amending the soil with gypsum. The report from Klienfelder was provided to the City prior to beginning construction.

After the fairways were seeded, the fairways were fertilized with "starter fertilizer." Starter fertilizer provides the new turf with a low dosage of nitrogen and other nutrients that the plant needs.

Topic: Lake System
RDEIR Page: 59

The RDEIR states:

"None of the water treatment systems were installed and construction documentation is not available to confirm if and how the lakes were lined."

The water treatment systems were installed. Even a cursory inspection of the lakes would find the large vaults that operate the water treatment systems. These large vaults have electrical connections, large water pumps, and ozone generators. At the base of the lakes, the ozone is released. It bubbles to the surface in much the same way that air bubbles to the surface in an aquarium.

The consultant for the City never asked to see the vaults or the equipment. The consultant for the City never asked to see the system operate. However, that did not stop the consultant for the City from lying about the project in the RDEIR.

All of the lakes are lined. Construction documentation is available to verify the installation. Photographs showing the liners being installed as well as the technique used to seal the liners at the bank are available.

The consultant for the City never asked to see the construction documentation. The consultant for the City never asked if the liner had been installed. However, that did not stop the consultant for the City from lying about the project in the RDEIR.

Topic: Wildlife
RDEIR Page: 34

The RDEIR states:

Because of the disturbance these wetlands and the habitat surrounding the wetlands have undergone, the wildlife species present in these wetlands are primarily common, widespread species, or species more typically associated with the adjacent ruderal or developed habitats."

The wetlands have not been disturbed.

The consultant for the City offers no evidence or logic linking the project to the wildlife observed at one moment in time. Such conclusions without factual evidence are not allowed under CEQA.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32nd district Agricultural Association.

Topic: Ordinance Size Trees
RDEIR Page: 39

The RDEIR states:

"A formal tree survey was not conducted prior to the golf course development."

Before beginning construction, the applicant hired a certified professional, Tree Health Professionals, to survey and report on the trees on site. This report went beyond a simple survey. Tree Health Professionals commented on the health of the ordinance size trees on site. In addition, Tree Health Professionals provided some suggestions for the care of the trees.

Prior to construction, this report was provided to the City and was accepted by the City.

The applicant has gone to great lengths to care for the existing trees on site, and to augment the number of trees on site. The ordinance trees have survived the construction and are flourishing.

Topic: Riparian Habitat
RDEIR Page: 41

The RDEIR states:

"In addition, approximately 0.5 acres of riparian habitat were removed during development of the golf course."

No riparian habitat was removed during construction. Statements of conclusion without facts and analysis are not allowed in an EIR.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32nd district Agricultural Association.

Topic: Mitigation for Impacts to Burrowing Owls
RDEIR Page: 46

The RDEIR states:

"The following measure is proposed by the project proponent to reduce the impacts to Burrowing Owls:

The project will comply with the *City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan*."

The date of the *City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan* is June 2003. The most recent opportunity for the applicant to comment on the DEIR was February 2003. So, it appears to be an assumption that the applicant has agreed to this.

The point here is not to argue that the applicant will or will not comply with the *City of Morgan Hill's Citywide Burrowing Owl Mitigation Plan.* The point is that the applicant has not had the opportunity to agree or disagree.

Another issue is that of ex post facto regulations. The applicant submitted a complete application four years ago. Are the applicable regulations to this application those at the time of application or those at the time of approval.

Topic: Irrigation Water Supply
RDEIR Page: 81

The RDEIR states:

"The pumping of groundwater for golf course irrigation will, however, substantially increase the amount of water extracted from the groundwater basin as compared to with pre-development conditions and will greatly exceed the groundwater recharge that occurs locally."

This is a statement in the RDIER is a conclusion without any facts or analysis. No facts concerning the ground water re-charge are provided. So, no conclusion about groundwater depletion can be drawn.

According to CEQA case law:

The EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. Citizens of Costa Mesa v. 32nd district Agricultural Association.

To get the facts, the applicant commissioned a study of the water levels in the aquifer. This study was performed by a local hydro-geology firm, Aquifer Sciences. This study shows that after five years of operation of the golf course, the water level in the aquifer has not changed.

The facts demonstrate that the baseless accusations made by the RDEIR are not only un-founded, but incorrect.

Exhibit G

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February 3, 2004

VIA FACSIMILE AND U.S. MAIL

Helene Leichter, City Attorney
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Re: Revised Draft EIR - The Institute Golf Course
Our File No. 360098.10000

Dear Helene:

As you might recall, I am assisting The Institute in the environmental review process for its proposed golf course/mathematics center project in the City. I have reviewed the Revised Draft Environmental Impact Report dated December 2003 (Revised Draft EIR) and I am concerned about the section on secondary impacts. I wanted to share my concerns with you. I am hopeful we can resolve these concerns so that this project can move forward.

While the Revised Draft EIR correctly defines secondary impacts as "those which are caused by the project and are later in time or are farther removed in distance, but are still reasonably foreseeable" (p. 107), it analyzes impacts that are, by definition, *not* secondary impacts. Based on the following, we urge that the analysis on secondary impacts be eliminated from the Revised Draft EIR. The information contained in this section may be appropriate under the "No-Project" alternative discussion or as background information.

ISSUE

In 1997, the City issued a grading permit to The Institute. The City maintains that The Institute exceeded the grading allowed under the permit and, as a result, various significant adverse impacts occurred on the site. The "project" at issue now, however, is a request for a Planned Unit Development (PUD) to construct a math institute and to continue operating the 18-hole golf course. Thus, the purpose of this Revised Draft EIR is to analyze what, if any, significant impacts issuing a PUD may have on *future* conditions of the property based on the property's *current* condition. See, CEQA Guidelines

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§15126.2(a). Yet, the secondary impact section contains an analysis that is antithetical to CEQA in that it incorrectly analyzes impacts that might have occurred from past actions.

LAW

An indirect physical change in the environment is "not immediately related to the project, but . . . is caused indirectly by the project." CEQA Guidelines §15064(d)(2). The analysis should consider only those indirect impacts that are "reasonably foreseeable"; the agency need not consider a potential impact that is "speculative or unlikely to occur." *Id.* (d)(3). Furthermore, an agency's analysis should focus on the impacts of the proposal before it, not the preexisting conditions that are not part of the proposal. *Silveira v. Las Gallinas Valley Sanitary District*, 54 Cal. App. 4th 980, 993-994 (1997). "The purpose of CEQA is to protect the environmental from proposed projects, not to protect proposed projects from the existing environment." *Baird v. County of Contra Costa*, 32 Cal. App. 4th 1464, 1468 (1995).

Analysis of pre-development or pre-project impacts is inconsistent with the principle that CEQA is not the appropriate mechanism to analyze or question prior activities even if that prior activity is illegal. *Riverwatch v. County of San Diego* 76 Cal. App. 4th 1428, 1452-53 (2000); *Fat v. County of Sacramento*, 97 Cal. App. 4th 1270, 1280 (2002). As explained by both *Riverwatch* and *Fat*, the real difficulty in developing an early baseline (as opposed to a baseline that exists at the time an application is submitted) is the burden it would impose in determining the true nature and extent of the past acts. *Riverwatch*, 76 Cal. App. at p.1453 ; *Fat*, 97 Cal. App. at p.1280.

DISCUSSION

We believe the secondary impact discussion is inappropriate and should be eliminated from the Revised Draft EIR for the following reasons.

First, the secondary impacts section does not analyze potential impacts that may be *caused* by the project, but rather analyzes impacts that might be caused if the project is not approved. In doing so, the analysis incorrectly analyzes past conditions and not future conditions. This analysis is not consistent with the definition of secondary impacts and thus, is not appropriate. See, CEQA Guidelines §15126.2(a).

Second, we seriously question whether it is "reasonably foreseeable" that the City could or would require the applicant to return the property to the condition that existed before it issued the 1997 permit for two reasons. As noted above, only reasonably foreseeable impacts need to be considered. First, the City cannot require the applicant to return the property to the condition that existed before the 1997 permit was issued by the City because the applicant already acquired a vested right under this permit. The fact that construction activity occurred after this permit was issued does not invalidate the 1997 permit. Second, the City has permitted the applicant to grade and operate the golf course over the years and even issued several temporary use permits that validated this grading activity and use. It would be difficult, if not impossible, for the City to now reverse these decisions.

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Third, the legitimate concern raised in *Riverwatch* and *Fat* regarding the difficult task in determining what past acts did or did not occur is so evident in the present situation. The drafters of the Revised Draft EIR are using different information than that information provided by the applicant to demonstrate what the property looked like before the 1997 grading permit was issued. The applicant went to painstaking lengths to document what the site looked like before and after the 1997 permit was issued. Yet, the drafters are not using this information in their analysis. We are not clear what information is being used by the drafters or how their information was generated in making their assumptions and determinations. All we know is that the information and assumptions are incorrect as shown by the following few examples.

1. The applicant did not remove 0.5 acres of riparian habitat as claimed on page 110 of the Revised Draft EIR A comparison of the pre-construction aerial photograph and the post construction aerial photograph contained in the *Analysis of the Pre-and Post Development Habitat Conditions* prepared by the applicant and submitted to the City, shows the riparian vegetation is unchanged.

2. The Revised Draft EIR claims at page 110 that the applicant removed "as many as 50 ordinance-sized trees" during golf course construction. The Revised Draft EIR recommends that the applicant replace these trees at a 5:1 ratio. Tree Health Professionals surveyed the trees on site in April of 1997. This survey was provided to the City. This survey noted the ordinance-sized trees on the property. None of these ordinance-sized trees were removed; rather these trees continue to flourish on the site. Also, as noted in the *Analysis of the Pre-and Post-Development Habitat Conditions*, the applicant planted over 11,000 large sized trees to compensate for the trees that were removed. Yet, this fact is not included in the analysis on secondary impacts.

3. The Revised Draft EIR at page 110 assumed all the lakes or ponds on the property were adequate breading sites for the California red-legged frog (CRF). It was also assumed that these water courses actually contained CRFs. Based on these inaccurate assumptions, the Revised Draft EIR recommends that the applicant mitigate for this perceived loss. As shown in the *Analysis of the Pre-and Post-Development Habitat Conditions*, these lakes were not adequate habitat for the CRF or any other special status species. Moreover, as part of the 1997 grading permit, the applicant replaced 3 acres of lakes with over 5 acres of lakes. These new lakes were created to provide suitable habitat for the CRF. Thus, the grading activities had a beneficial impact on the CRF and other special status species. Yet, this beneficial impact was not mentioned in the analysis.

These few examples show that the analysis incorrectly assumed impacts that did not and do not exist. This real and critical "difference" in information only complicates the environmental review of the project and leads to a confusing and inaccurate document.

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Fourth, because the drafters of the Revised Draft EIR feel they have no way of confirming what occurred in the past, they are making assumptions on what might have occurred. These assumptions lead to impacts that are not real and mitigation measures that are unnecessary and wholly inappropriate. As you know, EIRs cannot be based on assumptions. So that the true impacts of a project can be determined and appropriate mitigation measures created, an EIR's analysis must be based on facts, reasonable assumptions based on facts, and expert opinion supported by facts. CEQA Guidelines §15384; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990). This section clearly fails to include this required degree of information.

Fifth, allowing this section to remain in the Revised Draft EIR can serve as an improper mechanism for the City to extract commitments from the applicant (through mitigation measures) to address impacts that did not and do not exist. CEQA requires mitigation measures to be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established in case law. CEQA Guidelines §15041(a). In creating mitigation measures, the City must ensure that the measures actually relate to the impact caused by the project. The City cannot try to force an applicant to provide a benefit (through mitigation) unrelated to the impacts or that would do more than fully mitigate the impacts of the project. See, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996). As shown above, the impacts identified in this section are not real and thus, are not caused by the project. Accordlingly, the mitigation that follows cannot be imposed on the applicant.

Sixth, assuming the analysis is correct as an impact analysis, it does not contain a discussion of those impacts that might occur in returning the property to its original condition. As a result, the City cannot require the applicant to return the property to its original condition without first having the benefit of such an analysis. On a similar point, this analysis also fails to consider and take into account the mitigation that was already imposed on the applicant in the 1997 grading permit.

ALTERNATIVE APPROACH

We strongly urge that the secondary impact discussion be deleted. In the alternative, the information contained in this section can be moved to the Alternatives section under the discussion of the No-Project Alternative. A no-project alternative is the condition that would exist if the project was not approved. The discussion presently contained in the No-Project Alternative should remain because that too fits within the definition of that alternative. See, CEQA Guidelines §15126.6(2). Another place to include the secondary impact information is in the background section of the Revised Draft EIR.

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CONCLUSION

It is clearly inappropriate under CEQA to allow the secondary impact discussion to remain as an impact section. As a result, we ask that it be removed from the Revised Draft EIR as an impact discussion. As an alternative, the information can be placed in the discussion of the No-Project Alternative or in the background section.

Thank you for this opportunity to provide you with my comments. I would really appreciate the chance to discuss this with you in the hope of resolving my concerns. Please call me to discuss this matter at your earliest convenience.

Very truly yours,

Patricia E. Curtin

PEC/kjh